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WASHINGTON, D.C. 20240

Secretary of the Interior--Cecil D. Andrus

Office of Hearings and Appeals--Ruth R. Banks, Director

Office of the Solicitor--Clyde O. Martz, Solicitor

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This index-digest covers all published and important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through December 31, 1980, rendered in the Office of Hearings and Appeals, Ballston Towers, Building No. 3, 4015 Wilson Boulevard, Arlington, VA 22203, and in the Office of the Solicitor, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.

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Editor: Betty H. Perry
Editorial Assistant: Diane M. Garrison
Compositor: L. Lynne Dillard

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SYMBOLS

ANCAB -- Alaska Native Claims Appeal Board
D -- Ad Hoc Appeals
IA-T -- Indian Appeals -- Tort
IRCA -- Interior Board of Contract Appeals
IBIA -- Interior Board of Indian Appeals
IBLA -- Interior Board of Land Appeals
IBMA -- Interior Board of Mine Operations Appeals
IBSMA -- Interior Board of Surface Mining &
Reclamation Appeals
M -- Solicitor's Opinion
OHA -- Office of Hearings and Appeals
SEC -- Office of the Secretary

* * * * *

Editor's Note: The headnotes in this volume have been sorted by a computer. Editorial changes have been made to allow for grouping of the headnotes where they were similar and/or identical to headnotes from two or more decisions.

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William Allen, 17 IBLA 1 (1974)

William Allen v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-74-331, D. Utah. Rev'd & remanded, Apr. 20, 1976; no appeal.

Allied Contractors, Inc., 68 I.D. 145 (1961)

Allied Contractors, Inc. v. U.S., Ct. Cl. No. 163-63. Stipulation of settlement filed Mar. 3, 1967; compromised.

Suits for Judicial Review

American Coal Co., 84 I.D. 394 (1977)

American Coal Co. v. Department of the Interior, No. 77-1604, United States Ct. of Appeals, 10th Cir. Dismissed on motion of Petitioner, Nov. 23, 1977.

American Telephone & Telegraph Co., 25 IBLA 341 (1976)

American Telephone & Telegraph Co. v. Dept. of the Interior, Rogers C. B. Morton, et al., Civil No. 5695, D. Wyo. Dismissed with prejudice, Dec. 26, 1973; order amending judgment filed Feb. 15, 1974.

Arjay Oil Co., 31 IBLA 260 (1977)

Arjay Oil Co. v. Cecil D. Andrus, Individ. & in his capacity as Secretary of the Interior, George L. Turcott, Individ. & in his capacity as Acting Director, Bureau of Land Management, William C. Mathews, Individ. & in his capacity as Director of the Idaho State Office, J. W. & Carolyn Bloom & American Quasar Petroleum Co., Civil No. C-77-1167, D. Idaho. Dismissed, Jan. 19, 1978.

Armco Steel Corp., 84 I.D. 454 (1977)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1839, United States Ct. of Appeals, D.C. Cir. Suit pending.

Estate of Charles D. Ashley, 37 IBLA 367 (1978)

Eleanor P. Ashley as Personal Representative of the Estate of Charles D. Ashley v. Cecil D. Andrus, Secretary of the Interior, Civil No. 79-C-60, D. Wis. Rev'd, Mar. 27, 1980.

The Atchison, Topeka & Santa Fe Railway Co. v. Emma Mae Cox, U.S. v. Emma Mae Cox & M. D. & Edith Rawls, 4 IBLA 279 (1972)

Edith Rawls, individually & as Administratrix of the Estate of M. D. Rawls, Deceased, & Emma Mae Cox, a widow v. U.S., Rogers C. B. Morton, et al., Civil No. 73-19 PCT CAM, D. Ariz. Judgment for defendant, Apr. 22, 1975; reconsideration denied, Nov. 18, 1975; aff'd, 566 F.2d 1373 (9th Cir. 1978); no petition.

Virginia Gail Atchison et al., 13 IBLA 18 (1973); George Ondola, 17 IBLA 363 (1974), Petition for Reconsideration denied by Order, Mar. 17, 1975; Susie Ondola, 17 IBLA 359 (1974), Petition for Reconsideration denied by Order, Mar. 17, 1975.

George Ondola, Susie Ondola, Charlie John, and on behalf of all other Alaska Natives similarly situated v. James Hathaway et al., Civil No. A75-111, D. Alaska. Suit pending.

Atlantic Richfield Co., Marathon Oil Co., 81 I.D. 457 (1974)

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-180, D. Wyo.

Atlantic Richfield Co. & Pasco, Inc. v. Rogers C. B. Morton, Secretary of the Interior, Vincent E. McKelvey, Dir. of Geological Survey, & C. J. Curtis, Area O&G Supervisor, Geological Survey, Civil No. C74-181, D. Wyo.

Actions consolidated; judgment for Plaintiff, 407 F. Supp. 1301 (1975); aff'd, 556 F.2d 982 (10th Cir. 1977).

Estate of Albert Attocknie, IA-1442 (Feb. 7, 1966)

Willis Attocknie v. Stewart L. Udall, Civil No. 1646-66. Dismissed with prejudice, 261 F. Supp. 876 (1966); rev'd, 390 F.2d 686 (10th Cir. 1968); cert. denied, 393 U.S. 833 (1968).

Harold Babcock et al., A-30301 (June 16, 1965)

James Babcock et al. v. Stewart L. Udall, Civil No. 1-66-87, S.D. Idaho. Judgment for defendant, June 24, 1969; no appeal.

J. C. Babcock, J. G. Shipp, 25 IBLA 316 (1976), reconsideration denied, Aug. 12, 1976

J. C. Babcock & L. G. Shipp v. The Secretary of the Interior, Civil No. C-77-15, E.D. Wash. Suit pending.

David C. Bagley et al., A-30138 (Dec. 29, 1964)

David C. Bagley et al. v. Stewart L. Udall et al., Civil No. 109-65, D. Utah. Judgment for plaintiff, June 13, 1966; decree of dist. ct. vacated, case remanded to be dismissed as moot, Jan. 20, 1967, 10th Cir.; dismissed, Apr. 24, 1967.

Helen S. Bailey & C. Burglin, 11 IBLA 51 (1973) See William D. Sexton et al.

R. C. Bailey et al., 7 IBLA 266 (1972), R. C. Bailey & C. Burglin, 10 IBLA 281 (1973) See William D. Sexton et al.

Robert V. Bailey et al., 12 IBLA 253 (1973)

Max L. Krueger v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-1256. Dismissed, Jan. 28, 1975; no appeal.

Suits for Judicial Review

Leslie N. Baker et al., A-28454 (Oct. 26, 1960).
On reconsideration Autrice C. Copeland, 6^o I.D.
1 (1962).

Autrice Copeland Freeman v. Stewart L. Udall,
Civil No. 1578, D. Ariz. Judgment for defend-
ant, Sept. 3, 1963 (opinion); aff'd, 336 F.2d
706 (9th Cir. 1964); no petition.

Phil Baker, 84 I.D. 877 (1977)

Phil Baker v. Department of the Interior,
No. 77-1973, United States Ct. of Appeals,
D.C. Cir. Aff'd in part & rev'd in part,
Nov. 2^o, 1978.

H. E. Baldwin & John R. Keeling, 3 IRLA 71 (1971)

H. E. Baldwin & John R. Keeling v. Rogers C. B. Morton et al., Civil No. 72-438 PHX CAM,
D. Ariz. Dismissed, May 29, 1974; appeal dis-
missed, Jan. 16, 1976.

Ball Brothers Sheep Co. et al., 2 IBLA 166 (1971)

Ball Brothers Sheep Co. v. Rogers C. B. Morton,
Civil No. 1-72-35, D. Idaho. Dismissed,
Oct. 12, 1973; no appeal.

Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974)

Ballard E. Spencer Trust, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al.,
Civil No. 75-060, D.N.M. Judgment for defend-
ant, Aug. 19, 1975; aff'd, 544 F.2d 1067
(10th Cir. 1976).

Estate of Myron Bangs, Jr., IA-1327 (Feb. 7, 1966)

Helen Pratt Matin et al. v. Johnson, Supt., Osage Ind. Agency & Udall, Civil No. 6444,
N.D. Okla. Sustained, June 2, 1967; dis-
missed, June 25, 1970.

Max Barash, The Texas Co., 63 I.D. 51 (1956)

Max Barash v. Douglas McKay, Civil No. 939-56.
Judgment for defendant, June 13, 1957; rev'd
& remanded, 256 F.2d 714 (1958); judgment for
plaintiff, Dec. 18, 1958. Supplemental deci-
sion, 66 I.D. 11 (1959); no petition.

Barnard-Curtiss Co., 64 I.D. 312 (1957)
65 I.D. 49 (1958)

Barnard-Curtiss Co. v. U.S., Ct. Cl. No.
491-59. Judgment for plaintiff, 301 F.2d
909 (1962).

R. M. Barton, 4 IBLA 22^o; 5 IBLA 1 (1972)

R. M. Barton v. Rogers C. B. Morton et al.,
Civil No. 9322, D.N.M.

R. M. Barton v. Rogers C. B. Morton et al.,
Civil No. 9415, D.N.M. Actions consolidated.

Dismissed with prejudice, Dec. 20, 1972; no
appeal.

R. M. Barton, 7 IBLA 68 (1972)

R. M. Barton v. Rogers C. B. Morton et al.,
Civil No. 9692, D.N.M. Dismissed with
prejudice, Dec. 20, 1972; no appeal.

Eugenia Bate, 69 I.D. 230 (1962)

Katherine S. Foster & Brook H. Duncan II v. Stewart L. Udall, Civil No. 5258, D.N.M.
Judgment for defendant, Jan. 8, 1964; rev'd,
335 F.2d 828 (10th Cir. 1964); no petition.

Battle Mountain Co., A-29146 (Jan. 31, 1963)

Battle Mountain Co. v. Stewart L. Udall, Civil
No. 64-29, D. Ore. Per curiam decision,
225 F. Supp. 382 (1966); rev'd, 385 F.2d 90
(9th Cir. 1967); cert. denied, 390 U.S. 957
(1968)

Bay Construction Co. et al., IBCA-77 (Nov. 30, 1960)

Bay Construction Co. et al. v. U.S., Ct. Cl.
No. 302-60. Dismissed with prejudice.

Robert L. Beery et al., 25 IBLA 287; 83 I.D. 249
(1976)

J. A. Steele et al. v. Thomas S. Kleppe in his capacity as Secretary of the Interior, & U.S.,
Civil No. C76-1840, N.D. Cal. Aff'd, June 27,
1978; no appeal.

Administrative Appeal of Benson-Montin-Greer Drill-
ing Corp. v. Acting Area Director, Albuquerque
Area Office, Bureau of Indian Affairs, 7 IBIA 67
(1978)

Benson-Montin-Greer Drilling Corp. v. Cecil Andrus, Individ. & as Secretary of the Interior, The Board of Indian Appeals & the Acting Area Director of the Bureau of Indian Affairs, Albuquerque Area Office, Civil No. CIV 78-468-B, D.N.M. Suit pending.

Estate of Julius Benter, IBIA-70-5 (Nov. 17, 1970),
1 IBIA 59 (1971)

George B. Brazie, individually & as the Execu-
tor of the Last Will & Testament of Julius Benter, Deceased v. Rogers C. B. Morton, Civil
No. S-2360, E.D. Cal. Stipulated dismissal
with prejudice.

Sam Bergesen, 62 I.D. 295 (1955)

Reconsideration denied, IBCA-11 (Dec. 19, 1955)

Sam Bergesen v. U.S., Civil No. 2044 D. Wash.
Complaint dismissed Mar. 11, 1958; no appeal.

Suits for Judicial Review

Estate of William Bigheart, Jr., IA-T-21 (Aug. 8, 1969), IA-T-21 (Supp.) (Sept. 4, 1969)

Velma Rose Bigheart, Surviving Spouse of William Bigheart, Jr., Deceased Unallotted Osage Indian v. John Pappan, Supt., Osage Indian Agency et al., Civil No. 69-C-303, D. Okla. Order to Stay Proceedings issued May 15, 1970; amendment to complaint filed Dec. 17, 1971; judgment for defendant, July 31, 1972; reconsideration denied, Aug. 23, 1972; aff'd, 482 F.2d 1066 (10th Cir. 1973); cert. denied, 416 U.S. 937 (1974); rehearing denied, 417 U.S. 977 (1974).

Bishop Coal Co., 82 I.D. 553 (1975)

William Bennett, Paul F. Goad & United Mine Workers v. Thomas S. Kleppe, Secretary of the Interior, No. 75-2158, United States Ct. of Appeals, D.C. Cir. Suit pending.

Estate of Anthony Bitseedy, 5 IBIA 270 (1976)

Ruby Dawson, Guardian ad litem of Anthony Bitseedy, Jr., & Sara Mingus Bitseedy, Mother of Anthony Bitseedy, Jr. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-77-0237, D. Okla. Judgment for defendant, Oct. 27, 1977.

BLM-A-045569, 70 I.D. 231 (1963)

New York State Natural Gas Corp. v. Stewart L. Udall, Civil No. 2109-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall et al., Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; Per curiam decision, aff'd, Apr. 28, 1966; no petition.

Estate of Harold Russell Bobb, 5 IBIA 92 (1976)

Wilson Bobb, Sr. v. U.S. & Cecil D. Andrus, Secretary of the Interior, Civil No. C-77-314, S.D. Wash. Suit pending.

F. W. C. Boesche, A-27997 (Aug. 5, 1959)

Fenelon Boesche v. Fred A. Seaton, Civil No. 2463-59. Judgment for defendant, Nov. 23, 1960 (opinion); aff'd, 303 F.2d 204 (1961); cert. granted, 371 U.S. 886 (1962); aff'd, 373 U.S. 472 (1963).

Irving B. Brick, 36 IBLA 235 (1978)

Irving B. Brick v. Cecil D. Andrus, Civil No. 78-1814. Judgment for defendant, June 8, 1979; rev'd & remanded to Secretary with instructions, June 6, 1980.

Brookhaven Oil Co., A-27459 (July 29, 1957)

Brookhaven Oil Co. v. Fred A. Seaton, Civil No. 2120-57. Judgment for plaintiff, Oct. 1, 1958; no appeal.

Jessie A. Brown, 23 IBLA 23 (1975), On Reconsideration, 28 IBLA 339 (1977)

Jessie A. Brown & W. L. Tallon, Jr. v. Cecil D. Andrus, Secretary of the Interior, Curt Berklund, Director, Bureau of Land Management & Ben F. Collins, Civil No. F-77-128-Civ, D. Cal. Remanded to the Department, June 29, 1979; no appeal.

Melvin A. Brown, 69 I.D. 131 (1962)

Melvin A. Brown v. Stewart L. Udall, Civil No. 3352-62. Judgment for defendant, Sept. 17, 1963; rev'd, 335 F.2d 706 (1964); no petition.

R. C. Buch, 75 I.D. 140 (1968)

R. C. Buch v. Stewart L. Udall, Civil No. 68-1358-PH, C.D. Cal. Judgment for plaintiff, 298 F. Supp. 381 (1969); rev'd, 449 F.2d 600 (9th Cir. 1971); judgment for defendant, Mar. 10, 1972.

Buell Brothers, A-30679 (Mar. 29, 1967)

U.S. v. Carl M. Buell & Lloyd F. Buell, d/b/a Buell Bros., U.S. Atty. No. N-371. Compromised, Oct. 23, 1968.

Evelyn M. Bunch, 25 IBLA 44 (1976)

Evelyn M. Bunch v. Thomas Kleppe, Secretary of the Interior, Civil No. A76-115 CIV, D. Alaska. Suit pending.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272; 86 I.D. 133 (1979)

Holland Livestock Ranch, a Co-Partnership composed of Bright-Holland Co., Marimont-Holland Co. & Nemmeroff-Holland Co. and John J. Casey v. U.S., Cecil Andrus, Secretary of the Interior, Edward Roland, Cal. State Director, BLM, & Edward Hastey, Nev. State Director, BLM, et al., Civil No. R-79-78-HEC, D. Nev. Suit pending.

Bureau of Land Management, Appellant, Diamond Ring Ranch, Appellee & Bureau of Sport Fisheries & Wildlife, Amicus Curiae, 12 IBLA 358 (1973)

Diamond Ring Ranch, Inc. v. Rogers C. B. Morton, Secretary of the Interior, & Daniel P. Baker, State Dir., Bureau of Land Management for the State of Wyoming, Civil No. 5934, D. Wyo. Judgment for plaintiff, Dec. 20, 1974.

C. Burglin et al., 21 IBLA 234 (1975)

C. Burglin, A. E. Greig, Owen Jennings, Wallace F. Burnett, Jr., Alexander Miller, Charles Stack, Dora Alice Carter, Earnest G. Carter, Howard Bowen, and Evelyn Franich v. The Secretary of the Interior, Thomas Kleppe et al., Civil No. A75-232 CIV, D. Alaska. Consolidated with C. Burglin et al. v. Thomas Kleppe, Civil No. A75-113.

Suits for Judicial Review

Bushman Construction Co., IBCA-103 (Mar. 29, 1957)

Bushman Construction Co. v. U.S., Ct. Cl. No. 437-57. Petition dismissed, 164 F. Supp. 239 (1958).

Administrative Appeal of Norman R. Byrd v. Comm'r, Bureau of Indian Affairs, 7 IBLA 142 (1979)

Norman R. Byrd v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. C-79-229, E.D. Wash. Suit pending.

Cabax Mills, 32 IBLA 225 (1977)

BPS Associates, a Joint Venture composed of Black Investment Properties, Inc., CPC Plants Corp. & Triple S. Enterprises, Inc. v. U.S. & Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-845, D. Ore. Suit pending.

Zelph S. Calder, A-30039 (Sept. 18, 1963)

Zelph S. Calder v. Stewart L. Udall, Civil No. C-219-63, D. Utah. Judgment for defendant, Aug. 10, 1964; no appeal.

California Ass'n of Four-Wheel Drive Clubs, et al., 38 IBLA 361 (1978)

California Ass'n of 4WD Clubs, Inc., & California Off-Road Vehicle Ass'n, Inc. v. Cecil Andrus, Secretary of the Interior & James B. Ruche, State Director, Cal. State Office of BLM, Civil No. 79-1797-N, S.D. Cal. Suit pending.

The California Co., 66 I.D. 54 (1959)

The California Co. v. Stewart L. Udall, Civil No. 980-59. Judgment for defendant, 187 F. Supp. 445 (1960); aff'd, 296 F.2d 384 (1961).

State of California et al. v. Doria Mining and Engineering Corp. et al., U.S., Intervenor, 17 IBLA 390 (1974)

Doria Mining and Engineering Corp. v. Rogers Morton, Secretary of the Interior, et al., Civil No. CV 75-899-FW, C.D. Cal. Judgment for defendant, 420 F. Supp. 837 (1976); appeal filed Nov. 23, 1976.

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (1979)

California Portland Cement Co. v. Cecil D. Andrus, et al., Civil No. C-79-0477, D. Utah. Suit pending.

Western Slope Carbon, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C-79-350, C.D. Utah. Suit pending.

Rosebud Coal Sales Co. v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir. BLM, Maria B. Bohl, Chief, Land &

Mining, BLM, Wyo. State Office, Civil No. C79-160, D. Wyo. Suit pending.

In the Matter of Cameron Parish, Louisiana, Cameron Parish Police Jury & Cameron Parish School Board, June 3, 1968, appealed by Secretary July 5, 1968, 75 I.D. 289 (1968)

Cameron Parish Police Jury v. Stewart L. Udall et al., Civil No. 14,206, W.D. La. Judgment for plaintiff, 302 F. Supp. 689 (1969); order vacating prior order issued Nov. 5, 1969.

Jack D. Canon et al., 30 IBLA 112 (1977)

Jack D. & Billie B. Canon, C. Fred & Chloe Underwood, Donald W. & Susan Canon, David A. & Ann Underwood v. Cecil D. Andrus, Secretary of the Interior, Civil No. S78-51-PCW, E.D. Cal. Suit pending.

James W. Canon et al., 84 I.D. 176 (1977)

Mark B. Ringstad, William I. Waugaman, William N. Allen III, Nils Braastad, Elmer Price, Dan Ramras, & Kenneth L. Rankin v. U.S., Secretary of the Interior, & The Arctic Slope Regional Corp., Civil No. A78-32-Civ, D. Alaska. Suit pending.

Canterbury Coal Co., 83 I.D. 325 (1976)

Canterbury Coal Co. v. Thomas S. Kleppe, No. 76-2323, United States Ct. of Appeals, 3d Cir. Aff'd per curiam, June 15, 1977.

Carbon Fuel Co., 83 I.D. 39 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1208, United States Ct. of Appeals, D.C. Cir. Suit pending.

Jack E. Carl, A-27870, A-27900 (Apr. 23, 1959)

Jack E. Carl v. Fred A. Seaton, Civil No. 3069-59. Judgment for defendant, June 20, 1961; aff'd, 309 F.2d 653 (1962).

Carson Construction Co., 62 I.D. 422 (1955)

Carson Construction Co. v. U.S., Ct. Cl. No. 487-59. Judgment for plaintiff, Dec. 14, 1961; no appeal.

Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)
See William D. Sexton et al.

John Jay Casey, IBLA 74-196, Order decided, Jan. 29, 1975

John Jay Casey v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-74-153-RDF, D. Nev. Dismissed without prejudice, Dec. 23, 1974.

Suits for Judicial Review

C. F. Lytle Co., IBCA-172 (Sept. 30, 1958)

C. F. Lytle Co. v. U.S., Ct. Cl. No. 174-59.
Compromised.

Estate of George Chahesenah, IA-T-4 (June 20, 1967)

Viola Atewoofakewa (Tate) et al., v. Udall,
Civil No. 67-323, W.D. Okla. Judgment for
plaintiff, 277 F. Supp. 464 (1967); rev'd &
remanded to dismiss for want of jurisdiction,
407 F.2d 394 (10th Cir. 1969); cert. granted,
396 U.S. 815 (1969); rev'd, 397 U.S. 598
(1970).

Evelyn Chambers, 33 IBLA 271 (1978)

Evelyn Chambers v. Cecil D. Andrus, Secretary
of the Interior & Paul Howard, State Director,
Bureau of Land Management, Civil No. C-78-0111,
D. Utah. Settled by stipulation, Dec. 22, 1978.

Chaparral Resources, Inc., 39 IBLA 269 (1979)

Chaparral Resources, Inc. v. Cecil D.
Andrus, Secretary of the Interior, C. J.
Curtis, Area O&G Supervisor, Geological
Survey & Glenna M. Lane, Chief, O&G Sec.,
Land Office, BLM, Civil No. C79-077, D.
Wyo. Aff'd, Jan. 31, 1980.

Chargeability of Acreage Embraced in Oil and Gas
Lease Offers, 71 I.D. 337 (1964) Shell Oil Co.,
A-30575 (Oct. 31, 1966)

Shell Oil Co. v. Udall, Civil No. 216-67.
Stipulation of dismissal filed Aug. 19, 1968.

Chemi-Cote Perlite Corp. v. Arthur C. W. Bowen,
72 I.D. 403 (1965)

Bowen v. Chemi-Cote Perlite, No. 2 CA-Civ.
248, Ariz. Ct. App. Decision against Dept.
by the lower court aff'd, 423 P.2d 104 (1967);
rev'd, 432 P.2d 435 (1967).

Estate of Fannie Newrobe Choate, 7 IBIA 171 (1979)

Helen Edmo Sherman, Mary New Robe Redhead,
Roy (Archie, Jr.) St. Goddard, Vincent
Spotted Bear, Jack Edmo v. Cecil D. Andrus,
Secretary of the Interior, Jeanette Rattler
Choate Marceau, Civil No. CV-79-73-GF, D.
Mont. Suit pending.

Christiansen Oil, Inc., 37 IBLA 52 (1978)

Christiansen Oil & Gas, Inc. v. Cecil D.
Andrus, Secretary of the Interior & Daniel
P. Baker, Wyo. State Director, Bureau of Land
Management, Civil No. C78-257, D. Wyo. Suit
pending.

Christy Corp., IBCA-461 & 569 (June 20, 1966)

Christy Corp. v. U.S., Ct. Cl. No. 291-66.
Judgment for defendant, Harbor Boat Building
Co., 387 F.2d 395 (1967); compromised,
July 10, 1968.

U.S. v. Harco Engineering, A Division of
Harbor Boat Building Co., Civil No. 68-827-S,
D. Cal. Dismissed with prejudice, Feb. 24,
1970.

Citizens Committee to Save Our Public Lands,
29 IBLA 48 (1977)

Citizens Committee to Save our Public Lands,
Hastings Environmental Law Society v. Thomas
Kleppe, Secretary of the Interior, et al.,
Civil No. C-76032 SC, D. Cal. Suit pending.

Clark County, Nevada, 28 IBLA 210 (1976)

County of Clark, a political subdivision of
the State of Nevada v. Thomas Kleppe, Secre-
tary of the Interior & his successors in
office & E. I. Rowland, Director, Bureau of
Land Management for the State of Nevada & his
successors in office, Civil No. LV-77-13 RDF,
D. Nev. Rev'd, Jan. 18, 1978; no appeal.

Stephen H. Clarkson, 72 I.D. 138 (1965)

Stephen H. Clarkson v. U.S., Cong. Ref. 5-68.
Trial Commr's report adverse to U.S. issued
Dec. 16, 1970; Chief Commr's report concur-
ring with the Trial Commr's report issued
Apr. 13, 1971. P.L. 92-108 enacted accepting
the Chief Commr's report.

Appeals of Ethyl D. & Charles J. Clasby, Ruth
Carpenter, et al., & Mary Francis Antweil,
2 ANCAR 302 (1978)

Richard Wagner et al. v. U.S. et al., Civil
No. A78-106 CIV, D. Alaska. Suit pending.

Clear Gravel Enterprises, Inc., A-27967, A-27970
(Dec. 29, 1959)

The Dredge Corp. v. E. J. Palmer, No. 366,
D. Nev. Judgment for defendant, Sept. 25,
1962; remanded, 338 F.2d 456 (9th Cir. 1964);
judgment for plaintiff, Aug. 8, 1966; rev'd
and remanded with direction to enter judgments
for defendants, 398 F.2d 791 (9th Cir. 1968);
cert. denied, 393 U.S. 1066 (1969).

Appeal of COAC, Inc., 81 I.D. 700 (1974)

COAC, Inc. v. U.S., Ct. Cl. No. 395-75.
Suit pending.

P. Cobb, A-29769 (May 27, 1964)

P. and Osro Cobb v. U.S., Civil No. 967,
W.D. Ark. Motion to dismiss denied,
240 F. Supp. 574 (1965); dismissed, Jan. 17,
1966.

Suits for Judicial Review

Mrs. Hannah Cohen, 70 I.D. 188 (1963)

Hannah and Abram Cohen v. U.S., Civil
No. 3158, D.R.I. Compromised.

Barney R. Colson, 70 I.D. 409 (1963)

Barney R. Colson et al. v. Stewart L. Udall,
Civil No. 63-26-Civ.-Oc, M.D. Fla. Dismissed
with prejudice, 278 F. Supp. 826 (1968); aff'd,
428 F.2d 1046 (5th Cir. 1970); cert. denied,
401 U.S. 911 (1971).

Barney R. Colson, 7 IBLA 40 (1972)

Barney R. Colson v. Rogers C. B. Morton, Civil
No. 1960-72. Dismissed with prejudice, Feb. 7,
1974; per curiam decision, aff'd, Jan. 24,
1975; no petition.

Columbian Carbon Co., Merwin E. Liss, 63 I.D. 166
(1956)

Merwin E. Liss v. Fred A. Seaton, Civil No.
3233-56. Judgment for defendant, Jan. 9,
1958; appeal dismissed for want of prosecution,
Sept. 18, 1958, D.C. Cir. No. 14,647.

Commercial Metals Co., IRCA-99 (Aug. 27, 1959)

Commercial Metals Co. v. U.S., Ct. Cl. No.
458-59. Judgment for plaintiff, June 16,
1966.

Appeal by the Confederated Salish & Kootenai
Tribes of the Flathead Reservation, in the
Matter of the Enrollment of Mrs. Elverna Y.
Clairmont Baciarelli, 77 I.D. 116 (1970)

Elverna Yevonne Clairmont Baciarelli v.
Rogers C. B. Morton, Civil No. C-70-2200 SC,
D. Cal. Judgment for defendant, Aug. 27,
1971; aff'd, 481 F.2d 610 (9th Cir. 1973);
no petition.

Consolidated Mines & Smelting Co. et al., A-30760
(Sept. 19, 1967)

H. D. Brown v. U.S. & Walter Hickel, Civil
No. 69-2332-F, D. Cal. Dismissed with
prejudice, Mar. 20, 1970; reconsideration
denied, May 20, 1970.

Constitution Petroleum Co., Inc., et al., 25 IBLA
319 (1976)

Constitution Petroleum Co., Arrow Petroleum
Co., & East Utah Mining Co. v. Thomas S.
Kleppe et al., Civil No. C-76-257, D. Utah.
Suit pending.

Appeal of Continental Oil Co., 68 I.D. 337 (1961)

Continental Oil Co. v. Stewart L. Udall et al.,
Civil No. 366-62. Judgment for defendant,
Apr. 29, 1966; aff'd, Feb. 10, 1967; cert.
denied, 389 U.S. 839 (1967).

Continental Oil Co. v. Aztec Exploration & Devel-
opment Co., 32 IBLA 1 (1977)

Aztec Exploration & Development Co. v. Dept.
of the Interior, Office Hearings & Appeals,
Interior Board of Land Appeals & Continental
Oil Co., Civil No. CIV 77-827 PHX, D. Ariz.
Suit pending.

Estate of Hubert Franklin Cook, 5 IBIA 42; 83 I.D.
75 (1976)

Leroy V. & Roy H. Johnson, Marlene Johnson
Exendine & Ruth Johnson Jones v. Thomas S.
Kleppe, Secretary of the Interior, Civil No.
CIV-76-0362-E, W.D. Okla. Suit pending.

Autrice C. Copeland,
See Leslie N. Baker et al.

Copper Valley Machine Works, Inc., IBLA 78-606,
Order dismissing appeal dated Dec. 13, 1978.

Copper Valley Machine Works, Inc. v. Cecil D.
Andrus, Secretary of the Interior, Civil
No. 78-1572. Judgment for defendant, June 29,
1979; appeal filed Aug. 28, 1979.

E. L. Cord, Donald E. Wheeler, Edward D. Neuhooff,
80 I.D. 301 (1973)

Edward D. Neuhooff & E. L. Cord v. Rogers C. B.
Morton, Secretary of the Interior, Civil No.
R-2921, D. Nev. Dismissed, Sept. 12, 1975
(opinion); aff'd, July 17, 1978; no petition.

Jay Frederick Cornell, 4 IBLA 11 (1971)

Jay F. Cornell v. Rogers C. B. Morton, Civil
No. A-5-72, D. Alaska. Judgment for defendant,
Mar. 23, 1973; aff'd, Sept. 3, 1974; no
petition.

William D. Cornia et al., Wyoming 4-63-1, etc.,
Utah 1-63-1, etc., (Aug. 25, 1965)

William D. Cornia et al. v. Stewart L. Udall,
Civil No. 4-66, N.D. Utah. Dismissed with
prejudice, Sept. 1, 1967.

Cortella Coal Corp. et al.,
Alaska Mineral Exploration Co., 13 IBLA 158
(1973)

Cortella Coal Corp. & Alaska Mineral Explora-
tion Co. v. Curtis V. McVee, State Dir.,
Bureau of Land Management, State of Alaska,
Burton W. Silcock, Dir., Bureau of Land
Management & Rogers C. B. Morton, Secretary
of the Interior, Civil No. A-169-73, D.
Alaska. Dismissed with prejudice, Jan. 13,
1976.

Appeal of Cosmo Construction Co., 73 I.D. 229 (1966)

Cosmo Construction Co. et al. v. U.S., Ct.
Cl. No. 119-68. Ct. opinion setting case
for trial on the merits issued Mar. 19, 1971.

Suits for Judicial Review

Cotton Petroleum Corp. v. Samedan Oil Corp.,
29 IBLA 13 (1977)

Cotton Petroleum Corp. v. The Honorable Cecil Andrus, Secretary of the Interior, Stanley Speaks, Area Director for the Bureau of Indian Affairs, Anadarko Agency & Samedan Oil Corp., Civil No. CIV 77-0415T, D. Okla. Aff'd, Jan. 19, 1979; no appeal.

Cowin & Co., 83 I.D. 409 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1980, United States Ct. of Appeals, D.C. Cir. Suit pending.

Estate of Jonah Crosby (Deceased Wisconsin Winnebago Unallotted), 81 I.D. 279 (1974)

Robert Price v. Rogers C. B. Morton, individually & in his official capacity as Secretary of the Interior & his successors in office, et al., Civil No. 74-0-189, D. Neb. Remanded to the Secretary for further administrative action, Dec. 16, 1975.

Elizabeth Barndt Crouse et al., A-30542 (Mar. 7, 1968)

Elizabeth Barndt Crouse et al v. K. Ranch, Inc., Udall, et al., Civil No. R-2063, D. Nev. Dismissed without prejudice, Apr. 15, 1969; no appeal.

Elsie May Pikok Crow, 3 IBLA 114 (1971)

Elsie May Pikok Crow v. U.S. & Rogers C. B. Morton, Civil No. F-27-71 Civ. D. Alaska. Dismissed, July 13, 1972; no appeal.

Estate of George Daniels, IA-1295 (Nov. 2, 1965)

Elizabeth Daniels et al. v. Johnson, Supt., Osage Indian Agency & Udall, Civil No. 6443, N.D. Okla. Dismissed with prejudice, Jan. 9, 1967.

Susan Dawson, 35 IBLA 123 (1978)

Susan Dawson v. Cecil Andrus, Secretary of the Interior, Civil No. C78-167, D. Wyo. Judgment for defendant, Mar. 22, 1979; appeal filed Apr. 17, 1979.

Oma Belle Day et al., AA-5702 (Dec. 30, 1969)

Oma Belle Day v. Walter J. Hickel et al., Civil No. A-9-70, D. Alaska. Judgment for defendant, Feb. 19, 1971; aff'd, 481 F.2d 473 (9th Cir. 1973); no petition.

John C. deArmas, Jr., P. A. McKenna, 63 I.D. 82 (1956)

Patrick A. McKenna v. Clarence A. Davis, Civil No. 2125-56. Judgment for defendant, June 20, 1957; aff'd, 259 F.2d 780 (1958); cert. denied, 358 U.S. 835 (1958).

H. R. Delasco, 39 IBLA 194; 84 I.D. 192 (1979),
Blanche V. White, 40 IBLA 152; 85 I.D. 408 (1979)

Stewart Capital Corp. et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C79-123, D. Wyo. Suit pending.

The Dredge Corp., 64 I.D. 368 (1957)
65 I.D. 336 (1958)

The Dredge Corp. v. J. Russell Penny, Civil No. 475, D. Nev. Judgment for defendant, Sept. 9, 1964; aff'd, 362 F.2d 889 (9th Cir. 1966); no petition. See also Dredge Co. v. Husite Co., 369 P.2d 676 (1962); cert. denied, 371 U.S. 821 (1962).

Alfred L. Easterday, 34 IBLA 195 (1978), Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (1978)

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior & Alfred L. Easterday, & J. Roe, Civil No. C78-104, D. Wyo.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, Alfred L. Easterday, & J. Roe, Civil No. C78-213, D. Wyo.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, & Wyo. State Office, Bureau of Land Management, Civil No. C78-214, D. Wyo.

Actions consolidated. Remanded to Wyo. State Office Feb. 12, 1979; order of dismissal filed Feb. 13, 1979.

Eastern Associated Coal Corp., 82 I.D. 22 (1975)

International Union of United Mine Workers of America v. Rogers C. B. Morton, Secretary of the Interior, No. 75-1107, United States Ct. of Appeals, D.C. Cir. Dismissed by stipulation, Oct. 29, 1975.

Eastern Associated Coal Corp., 82 I.D. 311 (1975)

United Mine Workers of America v. Interior Board of Mine Operations Appeals, No. 75-1727, United States Ct. of Appeals, D.C. Cir. Petition for Review withdrawn, July 28, 1975.

Eastern Associated Coal Corp., 82 I.D. 506 (1975),
Reconsideration, 83 I.D. 425 (1976), Aff'd en banc, 83 I.D. 695 (1976), 7 IBMA 152 (1976)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1090, United States Ct. of Appeals, D.C. Cir. Voluntary dismissal, Apr. 4, 1977.

Suits for Judicial Review

Lawrence Edwards, A-30696, A-30705 (Apr. 21, 1967)

Lawrence Edwards v. Stewart Udall, Civil No. 2714, D. Mont. Rev'd & remanded, Nov. 18, 1968; stipulation for dismissal & order filed Aug. 4, 1970.

Wesley Laverne Edwards v. Paul Unruh, 33 IBLA 277 (1978)

Wesley Laverne Edwards v. U.S., Cecil Andrus, Secretary of the Interior, E. I. Rowland, Nevada State Director, Bureau of Land Management & Paul Unruh, Civil No. 77-0050 BRI, D. Nev. Judgment for defendant, Oct. 31, 1978; appeal filed Dec. 27, 1978.

Appeal of Eklutna, Inc., 1 ANCAB 165; 83 I.D. 500 (1976)

State of Alaska v. Alaska Native Claims Appeal Board et al., Civil No. A76-236, D. Alaska Suit pending.

Heldina Eluska, 21 IBLA 292 (1975)

Heldina Eluska, individ. & on behalf of all others similarly situated v. Thomas Kleppe, individ. & in his official capacity as Secretary of the Interior, Civil No. A-76-26 CIV, D. Alaska. Remanded for exhaustion of administrative remedies; reconsideration denied, Dec. 10, 1976; appeal dismissed; judgment denying plaintiffs' motion for summary judgment & remanding case to Agency, Apr. 20, 1977; appeal dismissed without prejudice, Dec. 11, 1978.

Henry J. Ernst, A-27196 (Nov. 7, 1955)

Henry J. Ernst v. Secretary of the Interior, Civil No. 9303, D. Alaska. Return of service quashed & complaint dismissed, Dec. 28, 1956 (opinion); aff'd, 244 F.2d 344 (9th Cir. 1957).

David H. Evans v. Ralph C. Little, A-31044 (Apr. 10, 1970), 1 IBLA 269; 78 I.D. 47 (1971)

David H. Evans v. Rogers C. B. Morton, Civil No. 1-71-41, D. Idaho. Order granting motion of Ralph C. Little for leave to intervene as a party defendant issued June 5, 1972. Judgment for defendants, July 27, 1973; aff'd, Mar. 12, 1975; no petition.

Elsie V. Farington, 9 IBLA 191 (1973)

Elsie V. Farington v. Rogers C. B. Morton, Secretary of the Interior, Civil No. S2768, E. D. Cal. Dismissed with prejudice, Dec. 5, 1973 (opinion); no appeal.

John J. Farrelly et al., 62 I.D. 1 (1955)

John J. Farrelly & The Fifty-One Oil Co. v. Douglas McKay, Civil No. 3037-55. Judgment for plaintiff, Oct. 11, 1955; no appeal.

Ralph G. Faulkner et al., 26 IBLA 110 (1976)

Ralph G., John L., Laura Jo, R. Fred & Susan L. Faulkner v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director, Bureau of Land Management, et al., Civil No. 1-77-99, D. Idaho. Judgment for defendant, Nov. 16, 1979; appeal filed Jan. 10, 1980.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39; 85 I.D. 380 (1978); On Reconsideration, 40 IBLA 222; 86 I.D. 234 (1979)

Benson J. Lamp v. Cecil Andrus, Secretary of the Interior, James L. Burski, Douglas E. Henriques & Edward W. Stuebing, Administrative Judges, IBLA, Civil No. 79-1804. Suit pending.

Chester H. Ferguson et al., 20 IBLA 224 (1975)

Chester H. Ferguson, Stella Ferguson Thayer & Howell L. Ferguson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 75-404-Civ-T-K, M.D. Fla. Dismissed without prejudice, July 16, 1975.

Administrative Appeal of Hannah Finnesand, A Native Alaska Indian v. Commissioner of Indian Affairs, 3 IBIA 263 (1975)

Hannah Finnesand and Flora Rondeau for themselves and all others similarly situated, and Flora Rondeau as next friend for Deborah Rondeau, Mitchell Rondeau & David Rondeau for themselves and all others similarly situated v. Rogers C. B. Morton et al., Civil No. A75-42, D. Alaska. Consent decree approved by the Judge.

Thomas R. Flickinger, 40 IBLA 53 (1979)

Pamela W. Kay, 40 IBLA 240 (1979)
Robert B. Coen, 41 IBLA 55 (1979)

Robert J. Ahrens, Harry Alatchanian, Jon Arney, Peter R. Brant, Helen D. Coen, Robert B. Coen & Jack P. Corsi, et al. v. Cecil Andrus, Secretary of the Interior, Civil No. C79-166, D. Wyo. Suit pending.

Foote Mineral Co., 34 IBLA 285; 85 I.D. 171 (1978)

Foote Mineral Co. v. Cecil D. Andrus, Individ. & as Secretary of the Interior, H. William Menard, Individ. & as Director, Geological Survey, & Murray T. Smith, Individ. & as Area Mining Supervisor, Geological Survey, Civil No. LV-78-141 RDF, D. Nev. Dismissed without prejudice Nov. 15, 1979. No appeal.

Carl E. Forsberg et al., A-29158 et al., (Aug. 19, 1963)

Carl E. Forsberg v. Stewart L. Udall, Civil No. 63-472, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Stewart L. Udall.

Suits for Judicial Review

Robert K. Foster et al., A-29857 (June 15, 1964)

Robert K. Foster et al. v. Manager, Riverside Land Office, et al., Civil No. 64-1110-WM, S.D. Cal. Judgment for defendant, 296 F. Supp. 1348 (1966); no appeal.

T. Jack Foster, 75 I.D. 81 (1968)

Gladys H. Foster, Executrix of the estate of T. Jack Foster v. Stewart L. Udall, Boyd L. Rasmussen, Civil No. 7611, D.N.M. Judgment for plaintiff, June 2, 1969; no appeal.

Franco Western Oil Co. et al., 65 I.D. 316, 427 (1958)

Raymond J. Hansen v. Fred A. Seaton, Civil No. 2810-59. Judgment for plaintiff, Aug. 2, 1960 (opinion); no appeal.

See Safarik v. Udall, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Myrtle A. Freer et al., A-29221 (Apr. 2, 1963)

Willis W. Ritter v. Rogers C. B. Morton et al., Civil No. 1-70-74, D. Idaho. Judgment for plaintiff, Nov. 14, 1972.

Fuel Resources Development Co., 43 IRLA 19 (1979)

Fuel Resources Development Co. v. Cecil D. Andrus, Secretary of the Interior, Dale R. Andrus, Director of the Colo. State Office, BLM, et al., Civil No. 79-1639, D. Colo. Suit pending.

Coral V. Funderburg, A-30514 (June 14, 1966)

Coral V. Funderburg v. Stewart L. Udall et al., Civil No. 2818 ND, S.D. Cal. Dismissed with prejudice, Feb. 15, 1967; aff'd, 396 F.2d 638 (9th Cir. 1968); no petition.

Gabbs Exploration Co., 67 I.D. 160 (1960)

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 219-61. Judgment for defendant, Dec. 1, 1961; aff'd, 315 F.2d 37 (1963); cert. denied, 375 U.S. 822 (1963).

Bernard J. & Myrle A. Gaffney, A-30327 (Oct. 28, 1965)

Bernard J. & Myrle A. Gaffney v. Stewart L. Udall, Civil No. 3-66-22, D. Minn. Stipulated dismissal without prejudice, Jan. 17, 1969; no appeal.

Estate of Temens (Timens) Vivian Gardafee, 5 IBIA 113; 83 I.D. 216 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Thomas Kleppe, Secretary of the Interior, & Erwin Ray, Civil No. C-76-200, E.D. Wash. Suit pending.

Stanley Garthofner, Duvall Bros., 67 I.D. 4 (1960)

Stanley Garthofner v. Stewart L. Udall, Civil No. 4194-60. Judgment for plaintiff, Nov. 27, 1961; no appeal.

Estate of Gei-kaun-mah (Bert), 82 I.D. 408 (1975)

Juanita Geikaunmah Mammedaty & Imogene Geikaumah Carter v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CIV 75-1010-E, W.D. Okla. Judgment for defendant, 412 F. Supp. 283 (1976); no appeal.

Uniform Relocation Assistance Appeal of Sidney Gelb, 2 OHA 59 (1976)

Sidney Gelb v. Thomas Kleppe, individually & officially as the Secretary of Interior, Civil No. 76-1931. Suit pending.

General Excavating Co., 67 I.D. 344 (1960)

General Excavating Co. v. U.S., Ct. Cl. No. 170-62. Dismissed with prejudice, Dec. 16, 1963.

Nelson A. Gerttula, 64 I.D. 225 (1957)

Nelson A. Gerttula v. Stewart L. Udall, Civil No. 685-60. Judgment for defendant, June 20, 1961; motion for rehearing denied, Aug. 3, 1961; aff'd, 309 F.2d 653 (1962); no petition.

Charles B. Gonsales, A-27944 (Apr. 22, 1959)

Charles B. Gonsales v. Frederick A. Seaton, Civil No. 2497-59. Plaintiff's amended complaint dismissed with prejudice, Jan. 12, 1962; no appeal.

Charles B. Gonsales et al., Western Oil Fields, Inc., et al., 69 I.D. 236 (1962)

Pan American Petroleum Corp. & Charles B. Gonsales v. Stewart L. Udall, Civil No. 5246, D.N.M. Judgment for defendant, June 4, 1964; aff'd, 352 F.2d 32 (10th Cir. 1965); no petition.

Charles B. Gonsales, A-29010 (Mar. 27, 1963)

Charles B. Gonsales v. Stewart L. Udall, Civil No. 5378 D.N.M. Dismissed with prejudice, Nov. 12, 1963.

Suits for Judicial Review

John Gonzales, A-30604 (Sept. 26, 1968)

John Gonzales v. Stewart Udall, Civil No. A-128-68, D. Alaska. Order to Stay Proceedings for 6 months filed June 3, 1970; judgment for plaintiff, June 30, 1972; upon stipulation of the parties, appeal dismissed, Nov. 30, 1972.

James C. Goodwin, 80 I.D. 7 (1973)

James C. Goodwin v. Dale R. Andrus, State Dir., Bureau of Land Management, Burton W. Silcock, Dir., Bureau of Land Management, & Rogers C. B. Morton, Secretary of the Interior, Civil No. C-5105, D. Colo. Dismissed, Nov. 29, 1975 (opinion); Appeal dismissed, Mar. 9, 1976.

Ray Granat et al., 25 IBLA 115 (1976)

Ray Granat v. Thomas S. Kleppe & the Department of the Interior, Civil No. C 76-274, D. Utah. Suit pending.

Estate of George Green, IA-T-11 (June 7, 1968)

Lillian Crenshaw et al. v. Secretary, Civil No. 68-317, W.D. Okla. Dismissed, Feb. 4, 1969; no appeal.

LaVonne E. Grewell, 23 IBLA 190 (1976)

LaVonne V. Grewell v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C76-602V, W.D. Wash. Judgment for defendant, May 9, 1978; appeal filed July 18, 1978.

Grindstone Butte Project, 18 IBLA 16 (1974), 24 IBLA 49 (1976)

Grindstone Butte Project et al. v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director of the Bureau of Land Management, et al., Civil No. 1-76-173, D. Idaho. Judgment for plaintiff, Sept. 8, 1977; appeal filed Nov. 7, 1977.

Estate of James Growing Thunder, Fort Peck Allottee No. 2210, deceased, 3 IBIA 18 (1974)

Nancy Growing Thunder & Vernon Growing Thunder, Minors, by and through their next friend and Guardian Ad Litem, Dale Running Bear v. Rogers Morton, individually and as Secretary of the Interior, et al., Civil No. 74-73 BLG, D. Mont. Dismissed, Mar. 15, 1976.

Gulf Oil Corp., 69 I.D. 30 (1962)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 2209-62. Judgment for defendant, Oct. 19, 1962; aff'd, 325 F.2d 633 (1963); no petition.

Gulf Oil Corp. et al., 21 IBLA 1 (1975)

Gulf Oil Corp. & Mobil Oil Corp. v. Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-2396, Section F, E.D. La. Remanded to the Secretary of the Interior for a hearing, Apr. 13, 1977.

Thomas V. Gullo & Joseph L. Randazzo, 29 IBLA 126 (1977)

Thomas V. Gullo & Joseph L. Randazzo v. Department of the Interior, Civil No. 77-0869. Aff'd Oct. 11, 1977.

Gustav Hirsch Organization, Inc., IBCA-175 (Oct. 30, 1958)

Gustav Hirsch Organization, Inc. v. U.S., Ct. Cl. No. 416-59. Compromised.

Guthrie Electrical Construction, 62 I.D. 280 (1955), IBCA-22 (Supp.) (Mar. 30, 1956)

Guthrie Electrical Construction Co. v. U.S., Ct. Cl. No. 129-58. Stipulation of settlement filed Sept. 11, 1958. Compromise offer accepted and case closed Oct. 10, 1958.

L. H. Hagood et al., 65 I.D. 405 (1958)

Edwin Still et al. v. U.S., Civil No. 7897, D. Colo. Compromise accepted.

William Hall et al., A-30849, A-30852, A-30857 (Sept. 16, 1968)

William Hall & Diane Hall v. Secretary of the Interior, Civil No. A-169-68, D. Alaska. Dismissed, July 25, 1969; no appeal.

Lester J. Hamel, A-28830 (Sept. 17, 1962)

Lester J. Hamel v. Neal D. Nelson et al., Civil No. 8565, N.D. Cal. Judgment for defendant, Dec. 13, 1963 (opinion); judgment entered Feb. 11, 1964; appeal docketed Feb. 14, 1964; dismissed by plaintiff, Mar. 20, 1964.

Suits for Judicial Review

Raymond J. Hansen et al., 67 I.D. 362 (1960)

Raymond J. Hansen et al. v. Stewart L. Udall, Civil No. 3902-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Robert Schulein v. Stewart L. Udall, Civil No. 4131-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Raymond J. Hansen, A-30179 (Mar. 5, 1965)

Mary L. Brandt and Natalie Z. Shell v. Stewart L. Udall, Civil No. 2659-ND, S.D. Cal. Dismissed, Sept. 30, 1965; amended complaint filed Nov. 15, 1965; judgment for defendant, June 7, 1966; dismissed for lack of jurisdiction, Nov. 15, 1967; judgment for defendants, Mar. 26, 1968; rev'd, 427 F.2d 53 (9th Cir. 1970); no petition.

Mary L. Brandt & Natalie Z. Shell v. Stewart L. Udall, Civil No. 2715-ND, S.D. Cal. Dismissed, Dec. 3, 1965.

Beverly Harrell, 12 IBLA 276 (1973)

Beverly Harrell v. A. John Hillsamer, Chief of Land & Minerals Operations, Bureau of Land Management for Nevada, & E. I. Rowland, State Dir., Bureau of Land Management, Nevada, Civil No. CIV-LV-2137, RDF, D. Nev. Dismissed, Dec. 7, 1973; motion for new trial denied, Feb. 6, 1974; no appeal.

Paul Harvey et al., A-30552 (June 24, 1966)

Paul Harvey, Grace Ernest and Lalo Enriquez v. Stewart L. Udall, Civil No. 6753, D.N.M. Judgment for defendant, Jan. 25, 1967; aff'd, 384 F.2d 883 (10th Cir. 1967); no petition.

Billy K. Hatfield et al. v. Southern Ohio Coal Co., 82 I.D. 289 (1975)

District 6 United Mine Workers of America et al. v. U.S. Dept. of Interior Board of Mine Operations Appeals, No. 75-1704, U.S. Court of Appeals, D.C. Cir. Board's decision aff'd, 562 F.2d 1260 (1977).

Headwaters Association, Protestant-Appellant Cabax Mills, et al., Intervenor, IBLA 76-68, remanded to Bureau of Land Management by Order, Oct. 21, 1975; Appeal of Harold P. Canady et al., IBLA 73-357, pending; Appeal of Elizabeth Freeman, IBLA 76-51, pending; Appeal of Alan Troxler, IBLA 74-215, pending; Appeal of Alan Winter et al., IBLA 75-653, pending; Appeal of Carl Wittman, IBLA 76-14, pending.

Arthur Downing, Alan Winter, Alan Troxler and Headwaters v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. 75-1128, D. Ore. Stipulated dismissal, Dec. 30, 1976.

Thomas D. Hickey, 34 IBLA 86 (1978)

Thomas D. Hickey v. U.S., Interior Board of Land Appeals, Cecil D. Andrus, Secretary of the Interior, & William L. Mathews, State Director (Idaho), BLM, Civil No. CIV 78-1142, D. Idaho. Suit pending.

Jesse Higgins, Paul Gower & William Gipson v. Old Ben Coal Corp., 81 I.D. 423 (1974)

Jesse Higgins et al. v. Cecil D. Andrus, No. 77-1363, United States Ct. of Appeals, D.C. Cir. Dismissed for lack of jurisdiction, June 20, 1977.

Hiko Bell Mining & Oil Co., 24 IBLA 255 (1976)

Hiko Bell Mining & Oil Co., a Utah Corp. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C 76-138, D. Utah. Judgment for plaintiff, Apr. 4, 1978.

Kenneth Holt, an individual, etc., 68 I.D. 148 (1961)

Kenneth Holt, etc. v. U.S., Ct. Cl. No. 162-62. Stipulated judgment, July 2, 1965.

Hope Natural Gas Co., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall et al., Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; Per curiam decision, aff'd, Apr. 28, 1966; no petition.

Elbert F. Howey, 15 IBLA 208 (1974)

Elbert F. Howey v. Rogers Morton, Secretary of the Interior, Civil No. A74-56, D. Alaska. Dismissed with prejudice, Oct. 16, 1975 (opinion); no appeal.

Estate of Alvin Hudson, 5 IBIA 174 (1976)

David Russell Hudson v. U.S., Thomas S. Kleppe, Secretary of the Interior, Veradine Reed Stearns, Lois Jean Reed Saxton, Mildred Reed Anderson, Ivan Stacy Reed Cleveland, Civil No. C76-227T, W.D. Wash. Dismissed with prejudice Mar. 6, 1979; appeal filed Mar. 14, 1979.

Boyd L. Hulse v. William H. Griggs, 67 I.D. 212 (1960)

William H. Griggs v. Michael T. Solan, Civil No. 3741, D. Idaho. Stipulation for dismissal filed May 15, 1962.

Suits for Judicial Review

Dan H. Hunter, Ray H. Albrechtsen, IBLA 70-79, 565
(Order of dismissal dated Feb. 22, 1973), reconsideration denied by Order, June 1, 1973.

Dan H. Hunter & Mountain States Resources Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-393-73, D. Utah. Judgment for Defendant, Dec. 17, 1974; aff'd, 529 F.2d 645 (10th Cir. 1976); no petition.

Ray H. Albrechtsen & Mountain States Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-392-73, D. Utah. Judgment for plaintiff, Mar. 31, 1976; rev'd & remanded with directions, 570 F.2d 906 (10th Cir. 1978); cert. denied, Oct. 2, 1978.

Stanley W. Hutchinson v. Clyde W. Bishop, A-29693
(May 4, 1964)

Clyde W. Bishop v. Stewart L. Udall, Civil No. 1-65-54, D. Idaho. Judgment for plaintiff, July 7, 1966; no appeal.

H & W Oil Co., 22 IBLA 313 (1975)

H & W Oil Co. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. 763016, E.D. Ill. Judgment for defendant, Nov. 29, 1976.

John V. Hyrup, 15 IBLA 412 (1974)

John V. Hyrup v. Rogers C. B. Morton, Civil No. 74-689, D. Colo. Rev'd & remanded for further administrative proceedings, 406 F. Supp. 214 (1976); appeal filed Jan. 14, 1976; final judgment entered May 12, 1976; appeal filed July 7, 1976; aff'd, Nov. 7, 1977; no petition.

Idaho Desert Land Entries - Indian Hill Group, 72 I.D. 156 (1965), U.S. v. Ollie Mae Shearman et al. - Idaho Desert Land Entries - Indian Hill Group, 73 I.D. 386 (1966)

Wallace Reed et al. v. Dept. of the Interior et al., Civil No. 1-65-86, D. Idaho. Order denying preliminary injunction, Sept. 3, 1965; dismissed, Nov. 10, 1965; amended complaint filed, Sept. 11, 1967.

U.S. v. Raymond T. Michener et al., Civil No. 1-65-93, D. Idaho. Dismissed without prejudice, June 6, 1966.

U.S. v. Hood Corp. et al., Civil No. 1-67-97, S.D. Idaho.

Civil Nos. 1-65-86 & 1-67-97 consolidated. Judgment adverse to U.S., July 10, 1970; rev'd, 480 F.2d 634 (9th Cir. 1973); cert. denied, 414 U.S. 1064 (1973); dismissed with prejudice subject to the terms of the stipulation, Aug. 30, 1976.

Appeal of Inter*Helo, Inc., IRCA-713-5-68 (Dec. 30, 1969), 82 I.D. 591 (1975)

John Billmeyer, etc. v. U.S., Ct. Cl. No. 54-74. Remanded with instructions to admit evidence, May 30, 1975.

Interpretation of the Submerged Lands Act, 71 I.D. 20 (1964)

Floyd A. Wallis v. Stewart L. Udall, Civil No. 3089-63. Dismissed with prejudice, Mar. 27, 1968.

Estate of Cleveland Iron Shooter, 7 IBIA 212 (1979)

Teresa Ramirez, Executor of Estate of Lola Ramirez v. Secretary of the Interior, Civil No. 79-L-293, D. Neb. Suit pending.

C. J. Iverson, 82 I.D. 386 (1975)

C. J. Iverson v. Kent Frizzell, Acting Secretary of the Interior & Dorothy D. Rupe, Civil No. 75-106-Blg, D. Mont. Stipulation for dismissal with prejudice, Sept. 10, 1976.

J. A. Jones Construction Co. et al., IRCA-233
(June 17, 1960)

Palisades Contractors et al. v. U.S., Civil No. 2247, D. Idaho. Settled.

J. A. Terteling & Sons, 64 I.D. 466 (1957)

J. A. Terteling & Sons v. U.S., Ct. Cl. No. 114-59. Judgment for defendant, 390 F.2d 926 (1968); remaining aspects compromised.

J. D. Armstrong Co., 63 I.D. 289 (1956)

J. D. Armstrong, Inc. v. U.S., Ct. Cl. No. 490-56. Plaintiff's motion to dismiss petition allowed, June 26, 1959.

Jensen-Rasmussen et al., IRCA-363 (Mar. 14, 1963)

Jensen-Rasmussen & Co. v. U.S., Civil No. 5963, W.D. Wash. Judgment for defendant, Feb. 24, 1964; no appeal.

Dale Johnson, A-30806 (Sept. 17, 1968)

Dale Johnson v. Stewart L. Udall, Secretary of the Interior, Civil No. A-135-68, D. Alaska. Stipulated Dismissal, Apr. 10, 1969; no appeal.

M. G. Johnson, 78 I.D. 107 (1971)

U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)

Menzel G. Johnson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CN-LV-74-158, RDF, D. Nev. Judgment for defendant, Oct. 18, 1977; appeal filed Dec. 5, 1977.

Suits for Judicial Review

Estate of Edward Alpheus Jones, 5 IBIA 138 (1976)

Robert Sam v. U.S. et al., Civil No. 76-0552. Dismissed as to defendants U.S., Department of the Interior & the Bureau of Indian Affairs, July 30, 1976; judgment for defendant Robert C. Snashall, July 30, 1976.

June Oil & Gas, Inc., Cook Oil & Gas, Inc.,
41 IBLA 394; 86 I.D. 374 (1979)

June Oil & Gas, Inc. & Cook Oil & Gas Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. 79-1334 D. Colo. Suit pending.

Kenneth J. Kadow et al., A-30053 (Oct. 5, 1964)

Kenneth J. Kadow et al. v. Stewart L. Udall, Secretary of the Interior, Civil No. A-1-65, D. Alaska. Judgment for defendant, Sept. 7, 1967; dismissed for lack of prosecution, Feb. 2, 1968; no petition.

Kanawah Coal Co., 7 IBMA 234 (1977)

Kanawah Coal Co. v. Cecil D. Andrus, No. 77-1089, United States Ct. of Appeals, 4th Cir. Petition for review denied, 553 F.2d 361 (4th Cir. 1977).

R. A. Keans, A-30183 (Feb. 16, 1965)

R. A. Keans v. Stewart L. Udall et al., Civil No. 2648-ND, S.D. Cal. Defendant's motion to dismiss granted, Nov. 22, 1965; no appeal.

Estate of Kee-ah-tha-com-oke-quah, IA-974, 975
(Sept. 16, 1965)

D. Q. (Bill) Couch v. Stewart L. Udall, Civil No. 66-282, W.D. Okla. Aff'd, 265 F. Supp. 848 (1967); aff'd, 404 F.2d 97 (10th Cir. 1968); no petition.

Kerr McGee Corp., Cabot Corp., Felmont Oil Corp., and Case-Pomeroy Corp., 6 IBLA 108 (1972),
Petition for Reconsideration denied, May 14, 1974

Kerr-McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Oil Corp. v. Rogers C. B. Morton et al., Civil No. 616-72. Dismissed with prejudice, Oct. 22, 1974; aff'd, 527 F.2d 838 (1975); no petition.

Estate of San Pierre Kilkaken (Sam E. Hill),
1 IBIA 299; 79 I.D. 583 (1972), 4 IBIA 242 (1975), 5 IBIA 12 (1976)

Christine Sam & Nancy Judge v. Thomas Kleppe, Secretary of the Interior, Civil No. C-76-14, E.D. Wash. Dismissed with prejudice.

John J. King, A-28543 (Oct. 13, 1960)

John J. King v. Stewart L. Udall, Civil No. 68-61. Judgment for plaintiff, Nov. 8, 1961; rev'd, 308 F.2d 650 (1962); no petition.

John J. King et al., Fairbanks 033268, 033279
(Sept. 25, 1964)

John J. King et al. v. Stewart L. Udall, Civil No. 2750-64. Judgment for plaintiffs, 266 F. Supp. 747 (1967); on May 4, 1967, a stipulation of voluntary dismissal with prejudice sgd. by the plaintiffs and all other parties.

John J. King, Dorothy W. King, Fairbanks 034577
(Oct. 26, 1965)

John J. and Dorothy W. King v. Stewart L. Udall, Civil No. A-6-66, D. Alaska. Dismissed with prejudice Apr. 24, 1968.

Barbara G. Kirk and Marjorie G. Wright
See Dean Kirk

Dean Kirk, A-29018a (Apr. 26, 1963), Barbara G. Kirk and Marjorie G. Wright, A-30022 (Aug. 20, 1963)

George M. Larsen et al. v. Stewart L. Udall, Civil No. 1651, D. Nev. Stipulation covering seven land entries; four are dismissed as moot, three are dismissed with prejudice.

Kirkpatrick Oil Co., 32 IBLA 329 (1977)

Kirkpatrick Oil & Gas Co. v. U.S. & Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-77-1247E, D. Okla. Judgment for defendant Nov. 26, 1979; appeal filed Jan. 18, 1980.

Margaret L. & Allan D. Klatt, 23 IBLA 59 (1975)

Margaret L. Klatt v. Thomas S. Kleppe, Individually & in his official capacity as Secretary of the Interior et al., Civil No. A76-44 CIV, D. Alaska. Suit pending.

Anquita L. Klunter et al., A-30483, Nov. 18, 1965
See Bobby Lee Moore et al.

Leo J. Kottas, Earl Lutzenhisser, 73 I.D. 123 (1966)

Earl M. Lutzenhisser and Leo J. Kottas v. Stewart L. Udall et al., Civil No. 1371, D. Mont. Judgment for defendant, June 7, 1968; aff'd, 432 F.2d 328 (9th Cir. 1970); no petition.

Suits for Judicial Review

Max L. Krueger, Vaughan B. Connelly, 65 I.D. 185 (1958)

Max Krueger v. Fred A. Seaton, Civil No. 3106-58. Complaint dismissed by plaintiff, June 22, 1959.

James M. Krumtum and Cale M. Shearer, A-30838 (Dec. 21, 1967)

James M. Krumtum & Cale M. Shearer v. Udall et al., Civil No. 6567, D. Ariz. Judgment for defendant, Jan. 6, 1970; no appeal.

Joseph T. Kurkowski, 15 IBLA 13 (1974)

John & Ruth E. Melcher v. Edwin Zaidlicz, Montana Dir. of the Bureau of Land Management, et al., Civil No. 74-34-BLG, D. Mont. Dismissed for want of jurisdiction, Sept. 4, 1974; dismissed, Sept. 11, 1975.

Richard M. Lade, As Attorney in Fact for Santa Fe Pacific R. R., A-29121 (Jan. 10, 1963)

Richard M. Lade, Attorney in Fact for Santa Fe Pacific R. R. v. Udall et al., Civil No. 67-14, D. Ore. Judgment for defendant, 295 F. Supp. 265 (1968); aff'd, 432 F.2d 254 (9th Cir. 1970); no petition.

W. Dalton La Rue, Sr., 69 I.D. 120 (1962)

W. Dalton La Rue, Sr. v. Stewart L. Udall, Civil No. 2784-62. Judgment for defendant, Mar. 6, 1963; aff'd, 324 F.2d 428 (1963); cert. denied, 376 U.S. 907 (1964).

W. Dalton La Rue, Sr. & Juanita S. La Rue, d/b/a Winnemucca Ranch, Appellants, M. S. Land & Live-stock Co., Intervenor, 9 IBLA 208 (1973)

W. Dalton La Rue, Sr. & Juanita S. La Rue v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-2827, D. Nev. Judgment for defendant, Mar. 12, 1974; aff'd, Mar. 2, 1976; rehearing denied, Apr. 21, 1976; cert. denied, Nov. 1, 1976.

Langdon H. Larwill et al., A-28697 (May 16, 1963)

Pacific Oil Co., a Corp. v. Stewart L. Udall, Civil No. 9406, D. Colo. Judgment for defendant, 273 F. Supp. 203 (1967); aff'd, 406 F.2d 452 (10th Cir. 1969); cert. denied, 395 U.S. 978 (1969).

Donald J. Laughlin, d/b/a/ Riverside Resort & Casino, 25 IBLA 41 (1976) On Reconsideration, 26 IBLA 154 (1976)

Donald J. Laughlin v. Thomas S. Kleppe, individually & as Secretary of the Interior, Curt Berklund, individually & as Director, Bureau of Land Management, & H. M. Bruce, individually & as Yuma District Manager of the BLM, Civil No. 76-237 RDF, D. Nev. Order granting motion to transfer case to Ariz. granted, May 4, 1977 (Civil No. 77-380-PHX-WPC, D. Ariz.) Suit pending.

River Queen Corp., an Arizona Corp., d/b/a River Queen Resort v. Thomas S. Kleppe, individually & as Secretary of Interior, et al., Civil No. CIV 76-873 PCT-WPC, D. Ariz. Suit pending.

L. B. Samford, Inc., 74 I.D. 86 (1967)

L. B. Samford, Inc. v. U.S., Ct. Cl. No. 393-67. Dismissed, 410 F.2d 782 (1969); no petition.

Charles Lewellen, 70 I.D. 475 (1963)

Bernard E. Darling v. Stewart L. Udall, Civil No. 474-64. Judgment for defendant, Oct. 5, 1964; appeal voluntarily dismissed, Mar. 26, 1965.

Perley M. Lewis, A-29572 (June 27, 1963)

Perley M. Lewis & Mildred C. Lewis v. Stewart L. Udall, Secretary of the Interior, Civil No. 5003 Phx., D. Ariz. Judgment for defendant, July 31, 1967; amended judgment for defendant, May 28, 1968; aff'd, 427 F.2d 673 (9th Cir. 1970); cert. denied, 400 U.S. 992 (1970).

Perley M. Lewis and Mildred C. Lewis, A-28707 (Dec. 30, 1963)

Perley M. Lewis et ux. v. Stewart L. Udall et al., Civil No. 5451 Phx., D. Ariz. Judgment for defendant, Mar. 22, 1966; aff'd, 374 F.2d 180 (9th Cir. 1967); no petition.

Administrative Appeal of Ruth Pinto Lewis v. Superintendent of the Eastern Navajo Agency, 4 IBIA 147; 82 I.D. 521 (1975)

Ruth Pinto Lewis, Individually & as the Administratrix of the Estate of Ignacio Pinto v. Thomas S. Kleppe, Secretary of the Interior, & U.S., Civil No. CIV-76-223 M, D.N.M. Judgment for plaintiff, July 21, 1977; no appeal.

Milton H. Lichtenwalner, A-28909 et al. (June 15, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 2932-62. Judgment for defendant, July 15, 1963; no appeal.

Suits for Judicial Review

Milton H. Lichtenwalner et al., 69 I.D. 71 (1962)

Kenneth McGahan v. Stewart L. Udall, Civil No. A-21-63, D. Alaska. Dismissed on merits, Apr. 24, 1964; stipulated dismissal of appeal with prejudice, Oct. 5, 1964.

Linn Land Co., A-28765 (July 12, 1962)

Linn Land Co. et al. v. Stewart L. Udall, Civil No. 63-264, D. Ore. Consolidated with Forsberg v. Udall, Schmand v. Udall, & Property Management Co. v. Udall, Battle Mt. Co. v. Udall. Judgment for defendant, 255 F. Supp. 382 (1966), except per curiam dec. as to Battle Mountain. Stipulated dismissal on appeal, Oct. 13, 1966.

Merwin E. Liss et al., 70 I.D. 231 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall et al., Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; per curiam dec., aff'd, Apr. 28, 1966; no petition.

Frederick W. Lowey et al., 40 IBLA 381 (1979)

Frederick W. Lowey et al. v. Cecil D. Andrus et al., Civil No. 79-3314. Suit pending.

John A. Gallagher et al. v. Cecil D. Andrus et al., Civil No. 79-3315. Suit pending.

J. E. Ham et al. v. Cecil D. Andrus et al., Civil No. 79-3316. Suit pending.

Dr. Heinz & Ursula Lichtenstein, et al. v. Cecil D. Andrus et al., Civil No. 79-3317. Suit pending.

James M. Ross et al. v. Cecil D. Andrus et al., Civil No. 79-3318. Suit pending.

Richard K. Vitek et al. v. Cecil D. Andrus et al., Civil No. 79-3319. Suit pending.

Leland M. Lucas, A-29228 (Dec. 10, 1962)

Leland Murray Lucas v. Stewart L. Udall et al., Civil No. 5007 Phx., D. Ariz. Stipulated dismissal, Oct. 10, 1967.

Estate of Richard Lucero, IA-1435 (June 13, 1966)

Eunice Lucero Vaile v. Stewart L. Udall, Civil No. 6808, W.D. Wash. Judgment for defendant, May 12, 1967; summary judgment entered May 25, 1967; no appeal.

Estate of Richard Lucero, 1 IBIA 46 (1970)

Eunice Lucero Vaile v. Rogers C. B. Morton et al., Civil No. 9585, D. Wash. Judgment for defendant, Jan. 14, 1972; aff'd, Feb. 26, 1974; no petition.

Bess May Lutey, 76 I.D. 37 (1969)

Bess May Lutey et al. v. Dept. of Agriculture, BLM, et al., Civil No. 1817, D. Mont. Judgment for defendant, Dec. 10, 1970; no appeal.

Joseph MacIsaac et al., 8 IBLA 51 (1972)

Joseph F. MacIsaac, Stanley P. Cornelius, Hilten L. Arnold, Henry E. Reeves, Starling P. Cornelius, Richard Ransom v. Rogers C. B. Morton, Civil No. A-6-73, D. Alaska. Dismissed with prejudice for want of prosecution by plaintiff, Dec. 19, 1974.

James W. McDade, 3 IBLA 226 (1971)

James W. McDade v. Rogers C. B. Morton, Civil No. 2437-71. Judgment for defendant, 353 F. Supp. 1006 (1973); per curiam decision, aff'd, 494 F.2d 1156 (D.C. Cir. 1974); no petition.

Sheridan L. McGarry, A-28759 (Jan. 26, 1962)

Sheridan L. McGarry v. Stewart L. Udall, Civil No. 1262-62. Judgment for defendant, 216 F. Supp. 314 (1962); no petition.

Elgin A. McKenna Executrix, Estate of Patrick A. McKenna, 74 I.D. 133 (1967)

Mrs. Elgin A. McKenna as Executrix of the Estate of Patrick A. McKenna, Deceased v. Udall, Civil No. 2001-67. Judgment for defendant, Feb. 14, 1968; aff'd, 418 F.2d 1171 (1969); no petition.

Mrs. Elgin A. McKenna, Widow and Successor in Interest of Patrick A. McKenna, Deceased v. Walter J. Hickel, Secretary of the Interior, et al., Civil No. 2401, D. Ky. Dismissed with prejudice, May 11, 1970.

A. G. McKinnon, 62 I.D. 164 (1955)

A. G. McKinnon v. U.S., Civil No. 9433, D. Ore. Judgment for plaintiff, 178 F. Supp. 913 (1959); rev'd, 289 F.2d 908 (9th Cir. 1961).

Estate of Alvina Beauvois McLean, IA-D-27 (Feb. 14, 1969), IA-D-30 (July 24, 1969)

Kenneth Samuel McLean v. Walter J. Hickel, Secretary of the Interior, Civil No. 2721-69, D.C. Judgment for defendant, Mar. 13, 1970; dismissed for lack of prosecution, Apr. 9, 1971.

Estate of Elizabeth C. Jensen McMaster, 5 IBIA 61; 83 I.D. 145 (1976)

Raymond C. McMaster v. U.S. Dept. of the Interior, Secretary of the Interior & Bureau of Indian Affairs, Civil No. C76-129T, W.D. Wash. Dismissed, June 29, 1978.

Suits for Judicial Review

Wade McNeil et al., 64 I.D. 423 (1957)

Wade McNeil v. Fred A. Seaton, Civil No. 648-58. Judgment for defendant, June 5, 1959 (opinion); rev'd, 281 F.2d 931 (1960); no petition.

Wade McNeil v. Albert K. Leonard et al., Civil No. 2226, D. Mont. Dismissed, 199 F. Supp. 671 (1961); order, Apr. 16, 1962.

Wade McNeil v. Stewart L. Udall, Civil No. 678-62. Judgment for defendant, Dec. 13, 1963 (opinion); aff'd, 340 F.2d 801 (1964); cert. denied, 381 U.S. 904 (1965).

Wade McNeil, A-30736 (Apr. 20, 1967)

Wade McNeil v. Udall, Civil No. 2705, D. Mont. Judgment for defendant, Feb. 6, 1969 (opinion); no appeal.

J. W. McTiernan, 11 IRLA 284 (1973)

J. W. McTiernan v. Marvin Franklin, Acting Secretary of the Interior, Civil No. 73-481-B, W.D. Okla. Dismissed, Apr. 4, 1974; aff'd, Jan. 7, 1975.

J. W. McTiernan, 14 IRLA 369 (1974)

J. W. McTiernan v. Rogers C. B. Morton, Secretary of the Interior, Civil No. FS-74-42-C, W.D. Ark. Judgment for defendant, Feb. 4, 1977.

Marathon Oil Co., 81 I.D. 447 (1974), Atlantic Richfield Co., Marathon Oil Co., 81 I.D. 457 (1974)

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-179, D. Wyo.

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-180, D. Wyo.

Atlantic Richfield Co. & Pasco, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-181, D. Wyo.

Actions consolidated; judgment for plaintiff, 407 F. Supp. 1301 (1975); aff'd, 556 F.2d 982 (10th Cir. 1977).

Estate of Andrew Jackson Marsh, 4 IBIA 106 (1975)

Warren Dale Ling & Francis Miles Ling, commonly known as "Frank Ling" v. Kent Frizzell, Acting Secretary of the Interior, Civil No. C-75-200, E.D. Wash. Judgment for defendant, Jan. 27, 1976.

Appeal of Roy L. Matchett, IBCA-826-2-70 (Feb. 26, 1971)

Roy L. Matchett v. U.S., Ct. Cl. 40-72. Dismissed with prejudice, Sept. 25, 1973.

Billy Mathis et al., A-30512 (July 6, 1966)

Billy Mathis et al. v. Stewart L. Udall et al., Civil No. 6833, D.N.M. Dismissed with prejudice, Jan. 6, 1967; rendered moot by P.L. 89-365.

Ralph E. May, A-29014 (Jan. 30, 1962)

Ralph E. May v. Stewart L. Udall, Civil No. 1379-62. Dismissed with prejudice, Mar. 22, 1963; no appeal.

Estate of Oliver Maynahonah, IA-1522 (No dec.), IA-T-1 (June 30, 1966)

Ruth Maynahonah Kadayso v. Stewart L. Udall, Civil No. 66-281, W.D. Okla. Dismissed with prejudice, Feb. 8, 1967.

Allan E. Mecham et al., A-30244 (Dec. 23, 1964)

Allan E. Mecham et al. v. Stewart L. Udall et al., Civil No. C-22-65, D. Utah. Motion to dismiss granted, May 11, 1965; aff'd, 369 F.2d 1 (10th Cir. 1966); no petition.

Salvatore Megna, Guardian, Philip T. Garigan, 65 I.D. 33 (1958)

Salvatore Megna, Guardian etc. v. Fred A. Seaton, Civil No. 468-58. Judgment for plaintiff, Nov. 16, 1959; motion for reconsideration denied, Dec. 2, 1959; no appeal.

Philip T. Garigan v. Stewart L. Udall, Civil No. 1577 Tux., D. Ariz. Preliminary injunction against defendant, July 27, 1966; supplemental dec. rendered Sept. 7, 1966; judgment for plaintiff, May 16, 1967; no appeal.

Meva Corp., 76 I.D. 205 (1969)

Meva Corp. v. U.S., Ct. Cl. No. 492-69. Judgment for plaintiff, 511 F.2d 548 (1975).

Albert P. Mickunas, 12 IBLA 275 (1973)

Albert P. Mickunas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-1820 WPG, C.D. Cal. Dismissed with prejudice, Sept. 30, 1974; dismissed, May 14, 1976; rehearing denied, June 3, 1976; cert. denied, Nov. 8, 1976.

Donald E. Miller, 2 IBLA 309 (1971), 15 IRLA 95 (1974)

Donald E. Miller v. Walter J. Hickel et al., Civil No. C-70-2328, D. Cal. Remanded to the Department for further proceedings, July 5, 1973; dismissed with prejudice, Feb. 6, 1975.

Suits for Judicial Review

Duncan Miller, A-27620 (July 28, 1958)

Duncan Miller v. Fred A. Seaton, Civil No. 346-60. Judgment for defendant, Feb. 23, 1961; aff'd, 307 F.2d 676 (1962); cert. denied, 371 U.S. 967 (1963); rehearing denied, 372 U.S. 950 (1963).

Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959)

Louise Cuccia & Shell Oil Co. v. Stewart L. Udall, Civil No. 562-60. Judgment for defendant, June 27, 1961; no appeal.

Duncan Miller, A-28008 (Aug. 10, 1959), A-28093 et al. (Oct. 30, 1959), A-28133 (Dec. 22, 1959), A-28378 (Aug. 5, 1960), A-28258 et al. (Feb. 10, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3470-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Duncan Miller, A-28057 (Oct. 16, 1959), A-28398 (Aug. 31, 1960), A-28359 (July 12, 1960), A-28433 (Aug. 30, 1960), A-28293, A-28436 (June 7, 1960), A-27897, A-27914, A-27923, A-27930, A-28003, A-28014 (Mar. 31, 1959), A-27810 (Jan. 16, 1959)

Duncan Miller v. Stewart L. Udall, Civil No. 3931-60. Judgment for defendant, Apr. 4, 1963; aff'd, per curiam dec., Feb. 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, Aug. 13, 1964; aff'd, Jan. 12, 1965; no petition.

Duncan Miller, A-28528 et al. (Feb. 10, 1960)

Betty J. Lewis v. Stewart L. Udall, Civil No. 3904-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Duncan Miller, A-28509 (Oct. 20, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 187-61. Judgment for defendant, May 24, 1963; no appeal.

Duncan Miller, A-28172 (Feb. 11, 1960), A-28267 (June 8, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3932-60. Judgment for defendant, May 22, 1963; aff'd, Feb. 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, Aug. 13, 1964; aff'd, Jan. 12, 1965; no petition.

Duncan Miller, A-28586, A-28633, A-28671, A-28686 (Jan. 25, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 1268-61. Judgment for defendant, Sept. 28, 1962; appeal dismissed (1963).

Duncan Miller, A-28647 (July 20, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 3409-61. Judgment for defendant, May 21, 1963; no appeal.

Duncan Miller, A-29312 (Jan. 29, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1381-62. Judgment for defendant, Nov. 21, 1962 (opinion); appeal dismissed Apr. 12, 1963.

Duncan Miller, A-28937 (Sept. 25, 1962), A-29041 (Nov. 7, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 4003-62. Dismissed for want of prosecution, May 1966.

Duncan Miller, A-29231 (Feb. 5, 1963)

See Lucille S. West, Duncan Miller, et al.

Duncan Miller, A-29365 (July 1, 1963), A-29521 (Aug. 29, 1963), & A-29633 (Sept. 5, 1963)

Duncan Miller v. Stewart L. Udall, Civil No. 2413-63. Dismissed, Oct. 2, 1967; no appeal.

Duncan Miller, 70 I.D. 1 (1963)

Duncan Miller v. Stewart L. Udall, Civil No. 931-63. Dismissed for lack of prosecution, Apr. 21, 1966; no appeal.

Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964)

Samuel W. McIntosh v. Stewart L. Udall, Civil No. 1522-64. Judgment for defendant, June 29, 1965; no appeal.

Duncan Miller, A-29900 (Mar. 5, 1964), A-30067 (Mar. 12, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 689-64. Dismissed for failure to prosecute, July 6, 1966.

Duncan Miller, A-30213 (Apr. 8, 1964), A-30192 (Apr. 9, 1964), A-30212 (July 13, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 1829-64. Judgment for defendant, Sept. 28, 1965; no appeal.

Duncan Miller, A-30122 (Sept. 23, 1964), A-30451 (Nov. 17, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2543-64. Motion to amend granted, Feb. 15, 1966; dismissed, Apr. 3, 1969; no appeal.

Duncan Miller, A-30270 (May 5, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. C-153-65, D. Utah. Judgment for defendant, Nov. 15, 1965; aff'd, 368 F.2d 548 (10th Cir. 1966); no petition.

Suits for Judicial Review

Duncan Miller, A-30434 (June 8, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 9477, N.D. Cal. Judgment for defendant, June 27, 1966; no appeal.

Duncan Miller, A-30393 (June 30, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2384-65. Judgment for defendant, Oct. 12, 1966; dismissed May 22, 1967; supp. complaint dismissed June 12, 1967; appeal dismissed Apr. 12, 1968; petition for mandamus denied, Oct. 14, 1968.

Duncan Miller, A-30517 (Apr. 28, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. 5047, D. Wyo. Judgment for defendant, Aug. 11, 1966; appeal dismissed, Sept. 14, 1967.

Duncan Miller, A-30546 (Aug. 10, 1966), A-30566 (Aug. 11, 1966), & 73 I.D. 211 (1966)

Duncan Miller v. Udall, Civil No. C-167-66, D. Utah. Dismissed with prejudice, Apr. 17, 1967; no appeal.

Duncan Miller, A-30570 (Aug. 3, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. A-139-66, D. Alaska. Judgment for defendant, Mar. 13, 1967; motion for reconsideration denied, Sept. 19, 1967; no appeal.

Duncan Miller, A-29231 (Feb. 5, 1963)

See Lucille S. West, Duncan Miller, et al.

Duncan Miller, A-30669 (Nov. 8, 1966)

Duncan Miller v. Director of the Bureau of Land Management, Civil No. 779, D. Mont. Judgment for defendant, Apr. 25, 1969; no appeal.

Duncan Miller, A-30628 (Nov. 16, 1966), A-30684 (Jan. 19, 1967), A-30708 (Nov. 16, 1966), A-30797 (Sept. 12, 1967)

Duncan Miller v. Secretary of the Interior & his officers, Civil No. 7334, D.N.M. Dismissed with prejudice, Aug. 28, 1968; motion to set aside judgment denied, Sept. 24, 1968; motion for reconsideration denied, Nov. 4, 1968.

Duncan Miller, A-30891 (Mar. 5, 1968)

Duncan Miller v. Udall, Civil No. 745-68. Dismissed with prejudice, Oct. 14, 1968; no appeal.

Duncan Miller, A-30924 (Nov. 13, 1968), A-30934 (Nov. 22, 1968), A-30966 (Oct. 29, 1968), A-31054 (Aug. 21, 1969)

Duncan Miller v. Secretary of the Interior, Civil No. 52-69. Amended complaint dismissed without prejudice, July 20, 1970; motion to reinstate case denied, Jan. 6, 1972; motion for reconsideration denied, Feb. 7, 1972.

Duncan Miller, A-31087 (Feb. 4, 1970), A-31095 (Feb. 2, 1970), A-31148 (Mar. 2, 1970), A-31159 (Mar. 2, 1970)

Duncan Miller v. Officers of the BLM & Dept. of the Interior, Civil No. 1393-70. Dismissed for failure to prosecute, Jan. 4, 1971; no appeal.

Duncan Miller, 4 IBLA 274 (1972)

Duncan Miller v. Adjudicative Officers of the U.S. Geological Survey, Tulsa, Okla., & the Adjudicative Officers of the Bureau of Land Management, Civil No. 73-C-96, N.D. Okla. Dismissed with prejudice, Nov. 2, 1973; motion for rehearing denied, Nov. 14, 1973; appeal dismissed, Feb. 8, 1974.

Duncan Miller, 6 IBLA 283 (1972), 6 IBLA 507 (1972), 7 IBLA 343 (1972)

Duncan Miller v. Adjudicative Officers of the Bureau of Land Management, Dept. of the Interior, Civil No. 1757-72. Judgment for defendant, Feb. 7, 1973; motion to set aside judgment denied, Mar. 5, 1973.

Duncan Miller, 7 IBLA 343 (1972), 16 IBLA 24 (1974), 16 IBLA 71 (1974), 16 IBLA 379 (1974)

Duncan Miller v. Bureau of Land Management, Department of the Interior, Secretary of the Interior, Civil No. 74-1488. Dismissed, Dec. 4, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 74-53-BLG, D. Mont. Dismissed, Oct. 31, 1974; motion to amend complaint denied, Dec. 18, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 1146, D. Mont. Dismissed, June 29, 1973; appeal not pursued by plaintiff.

Duncan Miller v. Officers of the Department of the Interior, Civil No. 76-48 BLG, D. Mont. Suit pending.

Duncan Miller, 10 IBLA 27 (1973)

Duncan Miller v. Administrative Officers of the Bureau of Land Management & Dept. of the Interior, Civil No. 1035-73. Dismissed, Oct. 30, 1973; motions for reconsideration denied respectively, Dec. 4, 1973, Jan. 4, 1974, Apr. 5, 1974; appeal dismissed, & Aug. 27, 1975; motion for rehearing denied, Aug. 27, 1975; motion for reconsideration denied, Nov. 6, 1975; application for extension of time to file writ of certiorari filed; no petition.

Duncan Miller, 12 IBLA 199, 201, 206 (1973), IBLA 73-319, 406, 407, 410, 411, 412, IBLA 74-12, 16 (Order of dismissal dated July 17, 1973)

Duncan Miller v. The Board of Land Appeals, Department of the Interior, Civil No. 1929-73. Dismissed, Feb. 15, 1974; appeal dismissed, Aug. 27, 1975; motion for rehearing denied, Aug. 27, 1975; motion for reconsideration denied, Nov. 6, 1975; application for extension of time to file writ of certiorari filed; no petition.

Suits for Judicial Review

Duncan Miller, 12 IBLA 201 (1973), 12 IBLA 206 (1973)

Duncan Miller v. Admin. Officers, California Bureau of Land Management, Civil No. S-2471, D. Cal. Dismissed, June 25, 1973; motion for rehearing filed June 29, 1973.

Duncan Miller, 15 IBLA 275 (1974), Order, May 13, 1974

Duncan Miller v. Operating Officers of the Bureau of Land Management, The Department of the Interior, & The Hon. Secretary of the Interior (Nominal Defendant), Civil No. 74-1116. Dismissed, Oct. 22, 1974; no appeal.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), IBLA 75-379 (dismissed by order, Mar. 20, 1975), IBLA 75-365 (dismissed by order, Mar. 24, 1975)

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-0905. Complaint dismissed, Aug. 8, 1975; reconsideration denied, Sept. 16, 1975.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), 21 IBLA 50 (1975), 22 IBLA 52 (1975), IBLA 75-379 (dismissed by order, Mar. 20, 1975), IBLA 75-365 (dismissed by order, Mar. 24, 1975), IBLA 75-251, 75-289, 75-326, 75-327, 75-382, 75-426 (dismissed by orders, Apr. 30, 1975), IBLA 75-278 (dismissed by order, May 22, 1975)

See also Evelyn R. Robertson

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-2138. Dismissed; appeal dismissed.

John R. Mimick et al., 25 IBLA 107 (1976)

John R. Mimick, James W. Belmont, Thomas J. Lauvetz & Arthur J. Denney v. Thomas Kleppe, Individually & in his capacity as Secretary of the Interior, Civil No. 76-0-240, D. Neb. Dismissed without prejudice, Dec. 21, 1976.

Mitchell Energy Corp., 32 IBLA 244 (1977)

Mitchell Energy Corp. v. Cecil D. Andrus, Individually & as Secretary of the Interior, Civil No. 77-2165. Judgment for defendant, Nov. 30, 1978; no appeal.

H. D. Mollohan & Eagle Tail Ranch, A-29335 (July 8, 1963)

H. D. Mollohan et al. v. Warren J. Gray et al., Civil No. 4877 Phx., D. Ariz. Judgment for defendant, Nov. 13, 1967; aff'd, 413 F.2d 349 (9th Cir. 1969); no petition.

Howard S. Mollring, A-29498 (July 26, 1963)

Howard S. Mollring v. J. E. Keough et al., Civil No. C-200-63, D. Utah. Judgment for defendant, Jan. 8, 1964; no appeal.

Monturah Co., 10 IBLA 347 (1973)

Charles S. Pashayan, Lillie A. Pashayan, Charles S. Pashayan, Jr., & Suzanne Lillie Pashayan, Co-partners, d/b/a Monturah Co. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-1083 (9th Cir.). Dismissed for lack of jurisdiction, Apr. 24, 1974; Civil No. F-74-5-Civ, E.D. Cal. Dismissed without prejudice, Apr. 11, 1974.

Bobby Lee Moore et al., 72 I.D. 505 (1965)

Anquita L. Klunter et al., A-30483 (Nov. 18, 1965)

Gary Carson Lewis, etc., et al. v. General Services Administration et al., Civil No. 3253, S.D. Cal. Judgment for defendant, Apr. 12, 1965; aff'd, 377 F.2d 499 (9th Cir. 1967); no petition.

Henry S. Morgan et al., 65 I.D. 369 (1958)

Henry S. Morgan v. Stewart L. Udall, Civil No. 3248-59. Judgment for defendant, Feb. 20, 1961 (opinion); aff'd, 306 F.2d 799 (1962); cert. denied, 371 U.S. 941 (1962).

Morrison-Knudsen Co., Inc., 64 I.D. 185 (1957)

Morrison-Knudsen Co. v. U.S., Ct. Cl. No. 239-61. Remanded to Trial Comm'r, 345 F.2d 833 (1965); Comm'r's report adverse to U.S. issued June 20, 1967; judgment for plaintiff, 397 F.2d 826 (1968); part remanded to the Board of Contract Appeals; stipulated dismissal on Oct. 6, 1969; judgment for plaintiff, Feb. 17, 1970.

Mildred A. Moss et al., 28 IBLA 364 (1977), Reconsideration denied, Mar. 18, 1977

Mildred A. Moss, Emily C. Biester, Donald E. Howell, Robert C. Pass & Thomas L. Williams v. Cecil D. Andrus, Secretary of the Interior, Arthur W. Zimmerman, State Director, Bureau of Land Management & Raul E. Martinez, Chief, Minerals Section, Bureau of Land Management, Civil No. CIV 77-234 B, D.N.M. Judgment for defendant, Nov. 1, 1977; aff'd, Sept. 20, 1978.

Glenn Munsey, Earnest Scott & Arnold Scott v. Smitty Baker Coal Co., 1 IBMA 208 (1972), 8 IBMA 43 (1977)

Glenn Munsey, Arnold Scott & Earnest Scott, Miners v. Rogers C. B. Morton, Secretary of the Interior et al., No. 72-2095, United States Court of Appeals for the District of Columbia Circuit. Vacated & remanded, 507 F.2d 1202 (1974).

Glenn Munsey v. Smitty Baker Coal Co., Ralph Baker, Smitty Baker, & P & P Coal Co., 84 I.D. 336 (1977)

Glenn Munsey v. Cecil D. Andrus, No. 77-1619, United States Ct. of Appeals, D.C. Cir. Suit pending.

Suits for Judicial Review

Uniform Relocation Assistance Appeal of Numerous Navajo Persons Who Reside on Black Mesa in Arizona, 1 OHA 292 (1976)

Buck Austin, Lilly, Jack & Billy Chief, Alta Rose Albert, Betty Crank, Manymule's Daughter #2, Steven & Kee Lake & Kee Begay v. Morris Thompson, Comm'r of Indian Affairs, Civil No. CIV-76-418-PCT-CAM, D. Ariz. Judgment for defendant, Jan. 20, 1978; appeal filed Mar. 15, 1978.

Navajo Tribe of Indians v. State of Utah, 80 I.D. 441 (1973)

Navajo Tribe of Indians v. Rogers C. B. Morton, Secretary of the Interior, Joan B. Thompson, Martin Ritvo & Frederick Fishman, members of the Board of Land Appeals, Dept. of the Interior, Civil No. C-308-73, D. Utah. Dismissed with prejudice, Jan. 4, 1979.

New England Fish Co., 42 IRLA 200 (1979)

New England Fish Co. v. Robert E. Sorenson, Chief, Branch of Lands & Minerals Operations BLM, Alaska State Office, Department of the Interior, Civil No. A79-283 CIV, D. Alaska. Suit pending.

New York State Natural Gas Corp., A-28687 (July 19, 1962)

Jacob N. Wasserman v. Stewart L. Udall, Civil No. 3207-62. Judgment for defendant, 234 F. Supp. 651 (1964); no appeal.

Jess H. Nicholas, Jr., A-30065 (Oct. 13, 1964)

Jess H. Nicholas, Jr. v. Stewart L. Udall, Civil No. A-67-64, D. Alaska. Judgment for defendant, Sept. 17, 1965; aff'd, 385 F.2d 177 (9th Cir. 1967); no petition.

Robert D. Nininger, Appellant, Paul C. Kohlman, Appellee, 16 IBLA 200 (1974)

Robert D. Nininger v. Rogers C. B. Morton & Kenneth J. Sire, Civil No. 74-1246. Defendant's motion for summary judgment granted, Mar. 20, 1975; no appeal.

Leonard E. Noren, A-27583 (Sept. 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil No. 2139 ND, S.D. Cal. Judgment for defendant, 199 F. Supp. 708 (1961).

Leonard E. Noren v. Walter E. Beck, Civil No. 2347 ND, S.D. Cal. Judgment for plaintiff, Sept. 17, 1965; rev'd & remanded sub nom. Robert E. McCarthy, successor to Walter E. Beck v. Leonard E. Noren et al., rev'd & remanded, 370 F.2d 845 (9th Cir. 1966); cert. denied, 387 U.S. 917 (1967).

Appeal of North Star Aviation Corp., IBCA-741 (May 19, 1969)

North Star Aviation Corp. v. U.S., Ct. Cl. No. 264-69. Commr's report adverse to U.S. issued Dec. 10, 1971; judgment for plaintiff, 458 F.2d 64 (1972).

Northwest Citizens for Wilderness Mining Co., 33 IRLA 317 (1978)

Northwest Citizens for Wilderness Mining Co. v. The Bureau of Land Management & Edna A. Haverland, Individ. & Chief, Branch of Records & Data Management, BLM, Civil No. 78-46-M, D. Mont. Suit pending.

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil No. 4181-60. Dismissed, Nov. 15, 1963; case reinstated, Feb. 19, 1964; remanded, Apr. 4, 1967; rev'd & remanded with directions to enter judgment for appellant, 389 F.2d 974 (1968); cert. denied, 392 U.S. 909 (1968).

Oil and Gas Leasing on Lands Withdrawn by Executive Orders for Indian Purposes in Alaska, 70 I.D. 166 (1963)

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. 760-63, D. Alaska. Withdrawn Apr. 18, 1963.

Superior Oil Co. v. Robert L. Bennett, Civil No. A-17-63, D. Alaska. Dismissed, Apr. 23, 1963.

Native Village of Tyonek v. Robert L. Bennett, Civil No. A-15-63, D. Alaska. Dismissed, Oct. 11, 1963.

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. A-20-63, D. Alaska. Dismissed, Oct. 29, 1963 (oral opinion); aff'd, 332 F.2d 62 (9th Cir. 1964); no petition.

George L. Gucker v. Stewart L. Udall, Civil No. A-39-63, D. Alaska. Dismissed without prejudice, Mar. 2, 1964; no appeal.

Oil Resources, Inc., 28 IBLA 394; 84 I.D. 91 (1977)

Oil Resources, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C-77-0147, D. Utah. Suit pending.

Estate of Rose Old Bear Wilson, 4 IBIA 62 (1975)

James Harold Kindness & Sherman Wilson, Jr. v. Kent Frizzell, Acting Secretary, Department of the Interior, Civil No. 75-76-Blg, D. Mont. Judgment for defendant, Apr. 9, 1976.

Suits for Judicial Review

Old Ben Coal Co., 81 I.D. 428, 81 I.D. 436, 81 I.D. 440 (1974)

Old Ben Coal Corp. v. Interior Board of Mine Operations Appeals et al., Nos. 74-1654, 74-1655, 74-1656, United States Court of Appeals for the 7th Cir. Board's decision aff'd, June 13, 1975; reconsideration denied, June 27, 1975.

Old Ben Coal Co., 82 I.D. 355 (1975)

United Mine Workers of America v. U.S. Interior Board of Mine Operations Appeals, No. 75-1852, United States Court of Appeals, D.C. Cir. Vacated & remanded with instructions to dismiss as moot, June 10, 1977.

Old Ben Coal Co., 84 I.D. 459 (1977)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1840, United States Court of Appeals, D.C. Cir. Suit pending.

George Ondola, 17 IBLA 363 (1974)
See Virginia Gail Atchison

Susie Ondola, 17 IBLA 359 (1974)
See Virginia Gail Atchison

Joseph I. O'Neill, Jr., A-30488 (Apr. 19, 1966), A-30488 (Supp.) (Dec. 7, 1966)

Joseph I. O'Neill, Jr. v. Stewart L. Udall, Civil No. 3556-SD-K, S.D. Cal. Remanded to the Dept. for clarification of Departmental decision, Aug. 12, 1966; order denying defendant's motion for summary judgment, without prejudice & remanding case for clarification of the affirmance of the Departmental decision, Mar. 8, 1967; no appeal; stipulated dismissal, Nov. 22, 1971.

Appeal of Ounalashka Corp., 1 ANCAR 104; 83 I.D. 475 (1976)

Ounalashka Corp., for & on behalf of its Shareholders v. Thomas Kleppe, Secretary of the Interior & his successors & predecessors in office, et al., Civil No. A76-241 CIV, D. Alaska. Suit pending.

Oyate, Inc. et al., IA-2629

Oyate, Inc. a nonprofit South Dakota Corp. et al. v. Rogers C. B. Morton, Civil No. 687-73. Dismissed, Jan. 7, 1974.

Elizabeth Pagedas, 38 IBLA 130 (1978), On Reconsideration, 40 IBLA 21 (1979)

Elizabeth Pagedas, Athena Pagedas, Kap Bae, Anna Srantos & Fred Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior & Wyo. State Office, Bureau of Land Management, Civil No. 79-2456. Suit pending.

Eugene C. Paine et al., A-27632 (Aug. 21, 1958)

Eugene C. Paine et al. v. Stewart L. Udall, Civil No. 2607-58. Judgment for plaintiff, Sept. 24, 1959; vacated & remanded, Wright v. Seaton, Misc. 1403, Jan. 11, 1960. Judgment for plaintiff, May 4, 1960; rev'd & remanded, Feb. 23, 1961; Judgment for defendant, Mar. 20, 1961; no petition.

Irene Mitchell Pallin, A-28766 (Sept. 21, 1962)

Irene Mitchell Pallin v. U.S. & Edward Elmer Mitchell, Jr., Civil No. 47552, N.D. Cal. Judgment for plaintiff, Dec. 16, 1970; rev'd, 496 F.2d 27 (9th Cir. 1974); no petition.

Pan American Petroleum Corp., IA-840 (Dec. 18, 1959)

Pan American Petroleum Corp. v. Stewart L. Udall, Civil No. 960-60. Judgment for plaintiff, 192 F. Supp. 626 (1961); subsequent administrative appeal & supplemental complaint filed; judgment for plaintiff, Feb. 16, 1966; no appeal.

Jack W. Parks v. L & M Coal Corp., 83 I.D. 710 (1976)

Jack W. Parks v. Thomas S. Kleppe, No. 76-2052, United States Court of Appeals, D.C. Cir. Voluntary dismissal, May 4, 1977.

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. U.S., Ct. Cl. No. 40-58. Stipulated judgment for plaintiff, Dec. 19, 1958.

Peabody Coal Co., 34 IBLA 139 (1978), 36 IBLA 242 (1978)

Peabody Coal Co. v. Cecil D. Andrus, Secretary of the Interior, Guy Martin, Assistant Secretary, Land & Water Resources, Frank Gregg, Dir. Bureau of Land Management, Civil No. C78-161, D. Wyo. Judgment for plaintiff, Sept. 19, 1979; no appeal.

Perry & Wallis, Inc., IBCA-617 (July 16, 1968)

Perry & Wallis, Inc. v. U.S., Ct. Cl. 365-68. Judgment for defendant, 427 F.2d 722 (1970).

Suits for Judicial Review

Estate of Pete-Goh-Deh-Dil (Joe Pete), IA-1322
(June 7, 1966)

Don & Winona James v. Mabel George Gomez et al., Civil No. S-66-104, E.D. Cal. Dismissed with prejudice as to defendants Udall, Crow & Hall, May 22, 1969; dismissed with prejudice as to defendant Gomez, Sept. 1, 1970.

Peter Kiewit Sons' Co., 72 I.D. 415 (1965)

Peter Kiewit Sons' Co. v. U.S., Ct. Cl. 129-66. Judgment for plaintiff, May 24, 1968.

Curtis D. Peters, 80 I.D. 595 (1973)

Curtis D. Peters v. U.S., Rogers C. B. Morton, as Secretary of the Interior, Civil No. C-75-0201 RFP, N.D. Cal. Judgment for defendant, Dec. 1, 1975; no appeal.

Frederick T. Peters et al., 41 IBLA 262 (1979)

Stewart Capital Corp., Cynthia S-H Bowers, Marvyn Carton, William Feick, Jr., Amey M. Harrison, Kenneth K. Kohrs, Phyllis Johnston, Barbara Michaels, Frederick T. Peters, R. J. Russette, Rharrc Associates, Donald Beck, Sherwin Gandee, Irwin Kramer & Joseph Fiato v. Raul Martinez, Chief, Mineral Sec., New Mexico State Office, BLM, Civil No. CIV-79-042C, D.N.M. Suit pending.

M. Blaine Peterson, A-28111 (Nov. 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil No. 3953-60. Dismissed without prejudice, Nov. 13, 1961; no appeal.

Virgil V. Peterson & Hiko Bell Mining & Oil Co., 37 IBLA 18 (1978)

Virgil V. Peterson v. The Dept. of Interior & Cecil D. Andrus, Secretary of the Interior, Civil No. C 78-0463, D. Utah. Suit pending.

Hiko Bell Mining & Oil Corp. v. Cecil D. Andrus, Secretary of the Interior, Guy Martin, Assistant Secretary, Land & Water Resources, & Frank Gregg, Dir., Bureau of Land Management, Civil No. C78-0465, D. Utah. Suit pending.

Petroleum Ownership Map Co., IBCA-110 (May 29, 1959)

Petroleum Ownership Map Co. v. U.S., Ct. Cl. 269-62. Judgment for plaintiffs, 389 F.2d 793 (1968).

City of Phoenix v. Alvin B. Reeves et al., 81 I.D. 65 (1974)

Alvin B. Reeves, Genevieve C. Rippey, Leroy Reeves & Thelma Reeves, as heirs of A. H. Reeves, Deceased v. Rogers C. B. Morton, Secretary of the Interior & The City of Phoenix, a municipal Corp., Civil No. 74-117 PHX-WPC, D. Ariz. Dismissed with prejudice, Aug. 9, 1974; reconsideration denied, Sept. 24, 1974; no appeal.

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1351-62. Judgment for defendant, Aug. 2, 1962; aff'd, 317 F.2d 573 (1963); no petition.

Platte Valley Construction Co., IBCA-168 (Aug. 28, 1958)

George Stanek et al. v. U.S., Ct. Cl. 189-72. Compromised.

Pocahontas Fuel Co., 83 I.D. 690 (1976)

Howard Mullins v. Cecil D. Andrus, No. 77-1087, United States Court of Appeals, D.C. Cir. Suit pending.

Pocahontas Fuel Co., 84 I.D. 489 (1977)

Pocahontas Fuel Co., Div. of Consolidation Coal Co. v. Cecil D. Andrus, No. 77-2239, United States Court of Appeals, 4th Cir. Suit pending.

John M. Pomeroy, A-28134 (Jan. 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil No. 8033, N.D. Cal. Dismissed by plaintiff, Aug. 15, 1961; no appeal.

Port Blakely Mill Co., 71 I.D. 217 (1964)

Port Blakely Mill Co. v. U.S., Civil No. 6205, W.D. Wash. Dismissed with prejudice, Dec. 7, 1964.

L. O. Power et al., 22 IBLA 15 (1975)

L. O. Power, Ellis J. & Lois Dover, & Noble Ribelin v. U.S. & Kent Frizzell, Acting Secretary of the Interior, Civil No. CIV 75-708 PHX-WPC, D. Ariz. Suit pending.

Property Management Co., A-29144 (Aug. 19, 1963)

Property Management Co. v. Stewart L. Udall, Civil No. 64-28, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Udall.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (1975), 26 IBLA 340 (1966) (Supp.)

Barbara C. Lisco v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-281, D.N.M. Remanded to the Department, Apr. 3, 1976.

Nola Grace Ptasynski v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-282, D.N.M. Remanded to the Department, Apr. 6, 1976; judgment for defendants, May 5, 1977.

Suits for Judicial Review

R. E. Puckett, A-30419 (Oct. 29, 1965)

Robert E. Puckett v. Stewart L. Udall, Secretary of the Interior, Civil No. 2786-65.
Dismissed without prejudice, Aug. 15, 1966.

Estate of Henry Frank Racine, 7 IBIA 1 (1978)

Martha Alfreda Racine Crawford et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CV-78-8-6F, D. Mont. Dismissed July 13, 1979; appeal filed Sept. 4, 1979.

Ethel C. Radzewicz et al., A-30866 (Jan. 29, 1968)

Georgette B. Lee (Hall) v. Udall, Civil No. 985-68. Judgment for defendant, Oct. 30, 1969; dismissed, Nov. 17, 1970.

Ram Petroleum, Inc. & Ramoco, Inc., 37 IBLA 184 (1978)

Ram Petroleum, Inc. v. Cecil Andrus, Secretary of the Interior, Edward W. Stuebing & Douglas E. Henriques, Administrative Judges of the IBLA, Civil No. R-79-0005, D. Nev. Rev'd, Oct. 24, 1979; appeal filed, Dec. 21, 1979.

Ramoco, Inc. & Ram Petroleum, Inc. v. Cecil Andrus, Secretary of the Interior, Edward W. Stuebing & Douglas E. Henriques, Admin. Judges of IBLA & L. Pollick, Chief Minerals Sec., Utah State Office of BLM, Civil No. C-79-0007, D. Utah. Judgment for defendants, Nov. 14, 1979; appeal filed Jan. 10, 1980.

Estate of John S. Ramsey (Wap Tose Note) (Nez Perce Allottee No. 853, Deceased), 81 I.D. 298 (1974)

Clara Ramsey Scott v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 3-74-39, D. Idaho. Dismissed with prejudice, Aug. 11, 1975; no appeal.

Ray D. Bolander Co., 72 I.D. 449 (1965)

Ray D. Bolander Co. v. U.S., Ct. Cl. 51-66. Judgment for plaintiff, Dec. 13, 1968; subsequent Contract Officer's dec., Dec. 3, 1969; interim dec., Dec. 2, 1969; Order to Stay Proceedings until Mar. 31, 1970; dismissed with prejudice, Aug. 3, 1970.

Estate of Elgin Red Elk, IA-1230 (Nov. 13, 1964)

Bert Taunah et al. v. Stewart Udall, Civil No. 65-82, W.D. Okla. Judgment for plaintiff, Apr. 27, 1967; rev'd & remanded, 398 F.2d 795 (10th Cir. 1968); no petition.

Estate of Crawford J. Reed (Unallotted Crow No. 6412), 1 IBIA 326; 79 I.D. 621 (1972)

George Reed, Sr. v. Rogers Morton et al., Civil No. 1105, D. Mont. Dismissed June 14, 1973; no appeal.

Reichhold Energy Corp., 40 IBLA 134 (1979)

Reichhold Energy Corp. v. Cecil D. Andrus, Civil No. 79-1274. Suit pending.

Reliable Coal Corp., 1 IBMA 97; 79 I.D. 139 (1972)

Reliable Coal Corp. v. Rogers C. B. Morton, Secretary of the Interior et al., No. 72-1477, United States Court of Appeals, 4th Cir. Board's decision aff'd, 478 F.2d 257 (4th Cir. 1973).

Republic Steel Corp., 82 I.D. 607 (1975)

Republic Steel Corp. v. Interior Board of Mine Operations Appeals, No. 76-1041, United States Court of Appeals, D.C. Cir. Rev'd & remanded, Feb. 22, 1978.

R. G. Brown, Jr. & Co., IBCA-356 (July 26, 1963)

Robert G. Brown, Jr. et al. v. U.S., Ct. Cl. No. 373-63. Judgment for plaintiff, Apr. 6, 1965; no appeal.

Richfield Oil Corp., 62 I.D. 269 (1955)

Richfield Oil Corp. v. Fred A. Seaton, Civil No. 3820-55. Dismissed without prejudice, Mar. 6, 1958; no appeal.

Mark B. Ringstad et al., Inlet Oil Corp. et al., Robert L. Lawler et al., A-31111, A-31115, A-31134, A-31188 (Mar. 17, 1970)

Robert Lawler et al. v. Walter J. Hickel, Civil No. F-14-70, D. Alaska.

Inlet Oil Corp. & Raymond J. Ellis v. Walter J. Hickel, Civil No. A-48-70, D. Alaska. Stipulated dismissal without prejudice, Aug. 11, 1970.

Actions consolidated, June 26, 1970. Judgment for defendant, Feb. 22, 1972; no appeal.

Hugh S. Ritter, Thomas M. Bunn, 72 I.D. 111 (1965), reconsideration denied by letter decision dated June 23, 1967, by the Under Secretary.

Thomas M. Bunn v. Stewart L. Udall, Civil No. 2615-65. Remanded, June 28, 1966.

Suits for Judicial Review

Estate of William Cecil Robedaux, 1 IBIA 106,
78 I.D. 234 (1971), 2 IBIA 33, 80 I.D. 390 (1973)

Oneta Lamb Robedaux et al. v. Rogers C. B. Morton, Civil No. 71-646, D. Okla. Dismissed, Jan. 11, 1973.

Houston Bus Hill v. Rogers C. B. Morton, Civil No. 72-376, W.D. Okla. Judgment for plaintiff, Oct. 29, 1973; amended judgment for plaintiff, Nov. 12, 1973; appeal dismissed, June 28, 1974.

Houston Bus Hill & Thurman S. Hurst v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-528-B, W.D. Okla. Judgment for plaintiff, Apr. 30, 1975; corrected judgment, May 2, 1975; per curiam dec., vacated & remanded, Oct. 2, 1975; judgment for plaintiff, Dec. 1, 1975.

Evelyn R. Robertson et al., Duncan Miller, A-29251 (Mar. 21, 1963) (see Duncan Miller, 20 IBLA 1 (1975))

Duncan Miller v. Stewart L. Udall, Civil No. 1066-63. Judgment for defendant, Mar. 13, 1964; aff'd, 349 F.2d 193 (1965); cert. denied, 385 U.S. 929 (1966); rehearing denied, 385 U.S. 1021 (1966).

W. C. Wells v. Stewart L. Udall, Civil No. A-37-63, D. Alaska. Dismissed with prejudice, Sept. 7, 1965; no appeal.

Evelyn R. Robertson v. Stewart L. Udall, Civil No. 1561-63. Judgment for defendant, Apr. 4, 1964; aff'd, 349 F.2d 195 (1965); no petition.

Estate of Clark Joseph Robinson, 7 IBIA 74; 85 I.D. 294 (1978)

Rene Robinson, by & through her Guardian Ad Litem, Nancy Clifford v. Cecil Andrus, Secretary of the Interior, Gretchen Robinson & Trixi Lynn Robinson Harris, Civil No. CIV-78-5097, D.S.D. Suit pending.

George Rodda, Jr., 27 IBLA 186 (1976), 37 IBLA 189 (1978)

Norman Lewis McBride, Assignor & George Rodda, Jr., Assignee v. Secretary of the Interior, Roy Maggart, an Individual, Eldon J. Fairbanks, an Individual, Civil No. CIV 79-96 TUC-MAR, D. Ariz. Suit pending.

Rosebud Coal Sales Co., 37 IBLA 251; 85 I.D. 396 (1978)

Rosebud Coal Sales Co. v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Director, Bureau of Land Management, & Maria B. Bohl, Chief, Land & Mining, Bureau of Land Management, Wyo., Civil No. C78-261, D. Wyo. Judgment for plaintiff, Oct. 17, 1979. No appeal.

Richard W. Rowe, Daniel Gaudiane, 82 I.D. 174 (1975)

Richard W. Rowe, Daniel Gaudiane v. Stanley K. Hathaway, in his official capacity as Secre-

tary of the Interior, Civil No. 75-1152. Judgment for defendant, July 29, 1976.

Frank Roybal, Jr. v. U.S. Steel Corp., 7 IBMA 238 (1977)

Frank Roybal, Jr. v. Cecil D. Andrus, No. 77-1307, United States Court of Appeals, D.C. Cir. Suit pending.

Edgar Rundle, A-29593 (Aug. 2, 1963)

Edgar Rundle v. Stewart L. Udall, Civil No. 191-65. Judgment for defendant, Sept. 22, 1965; aff'd, 379 F.2d 112 (1967); cert. denied, 389 U.S. 845 (1967)

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil No. 2106-68. Judgment for plaintiff, 211 F. Supp. 586 (1962); no appeal.

Louise Safarik, A-28307 et al. (Apr. 22, 1960)

John J. King v. Stewart L. Udall, Civil No. 3903-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Louise Safarik et al., A-28562 et al. (Jan. 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil No. 1081-61. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Samuel Gary v. Stewart L. Udall, Civil No. 1202-61. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Rune E. S. Safve, 13 IBLA 212 (1973)

Rune E. S. Safve v. Secretary of the Interior, Interior Board of Land Appeals, Dir., Bureau of Land Management, State Dir., Alaska, Bureau of Land Mgmt., Civil No. A-173-73 CIV, D. Alaska. Dismissed, Mar. 4, 1975; reinstated by court order, Apr. 9, 1975; remanded to the Bureau of Land Management for proceedings, Mar. 19, 1976.

Louis Samuel et al., 8 IBLA 268 (1972)

Charles M. Goad v. U.S. & Rogers Morton, Secretary of the Interior, Civil No. 9948, D.N.M. Dismissed with prejudice, Jan. 16, 1974.

Joseph & Jean Maisano v. Rogers C. B. Morton, Secretary of the Interior, Bureau of Land Mgmt., & Board of Land Appeals, Civil No. 39720, E.D. Mich. Dismissed, Oct. 12, 1973 (opinion); no appeal.

Gordon W. & Alleyne J. Laatz v. Rogers C. B. Morton et al., Civil No. 03266, E.D. Mich. Dismissed, Feb. 20, 1975 (opinion).

Louis Samuel v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CV-74-1112-EC, C.D. Cal. Dismissed with prejudice, Aug. 26, 1974; no appeal.

Suits for Judicial Review

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil No. 105-63. Judgment for defendant, 243 F. Supp. 672 (1965); aff'd sub nom. S. Jack Hinton et al. v. Stewart L. Udall, 364 F.2d 676 (1966); cert. denied, 385 U.S. 878 (1966); supplemented by M-36767, Nov. 1, 1967.

B. F. Sandoval, Jr., A-29975 (June 12, 1964)

B. F. Sandoval, Jr. v. Stewart L. Udall, Civil No. 5779, D.N.M. Judgment for plaintiff, May 11, 1965; appeal dismissed Jan. 12, 1966; order vacating prior judgment issued Jan. 28, 1966.

Santa Fe Sand & Gravel Co., A-30657 (Apr. 25, 1967)

Santa Fe Sand & Gravel Co. v. Boyd L. Rasmussen et al., Civil No. 7135, D.N.M. Summary judgment for defendant, May 28, 1968; no appeal.

Kenneth F. Santor, 13 IBLA 208 (1973)

Kenneth F. Santor v. Rogers C. B. Morton, individually & as Secretary of the Interior, Daniel P. Baker, individually & as Dir. for the State of Wyo., Bureau of Land Mgmt., & Glenna M. Lane, individually & as Chief, O&G Section, Land Ofc., Wyo., Civil No. 5949, D. Wyo. Dismissed, Nov. 15, 1974 (opinion); no appeal.

John W. Savage, 6 IBLA 253 (1972)

Amerada Hess Corp., Louisiana Land & Exploration Co., & Oil Shale Corp. v. Rogers C. B. Morton, Civil No. C-4361, D. Colo. Order holding matter in abeyance until 60 days after all appeals are completed in Oil Shale Corp., supra, filed June 3, 1974.

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (Aug. 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil No. 63-484, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Udall.

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil No. 3912-60. Judgment for defendant, Apr. 11, 1961; no appeal.

Betty Mae Schober & John L. Richardson, A-29430 (Jan. 8, 1964). Reconsideration denied, Mar. 6, 1964.

John L. Richardson v. Stewart L. Udall, Civil No. 3975, D. Idaho. Remanded, 253 F. Supp. 72 (1966); no appeal.

Charles Schraier, Robert Schulein, et al., A-30814, A-30816 (Nov. 21, 1967)

Charles Schraier v. Stewart L. Udall, Secretary of the Interior, Civil No. 427-68. Judgment for defendant, Oct. 31, 1968; aff'd, 419 F.2d 663 (1969); petition for rehearing en banc denied, Oct. 8, 1969; no petition.

Joseph M. Schuck, A-28603 (Aug. 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,682. Petition for review dismissed, Dec. 15, 1961; no appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil No. 1402 Tuc., D. Ariz. Complaint dismissed, Jan. 30, 1962; no appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil No. 1402 Tuc., D. Ariz. Judgment for defendant, Mar. 19, 1962; no appeal.

Seal and Co., 68 I.D. 94 (1961)

Seal & Co. v. U.S., Ct. Cl. 274-62. Judgment for plaintiff, Jan. 31, 1964; no appeal.

Administrative Appeal of Sessions, Inc. (A Cal. Corp.) v. Vyola Olinger Ortner (Lessor), Lease No. PSL-33, Joseph Patrick Patencio (Lessor), Lease No. PSL-36, Larry Olinger (Lessor), Lease No. PSL-41, 81 I.D. 651 (1974)

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3589 LTL, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3591 MML, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3590 FW, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

John J. Sexton, 15 IBLA 69 (1974), 20 IBLA 187 (on reconsideration)

John J. Sexton v. U.S., Rogers C. B. Morton as the Secretary of the Interior, et al., Civil No. F-74-6, D. Alaska. Dismissed, Jan. 5, 1977.

William D. Sexton et al., 9 IBLA 316 (1973), R. C. Bailey et al., 7 IBLA 266 (1972), R. C. Bailey & C. Burglin, 10 IBLA 281 (1973), Helen S. Bailey & C. Burglin, 11 IBLA 51 (1973), Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)

C. Burglin & William D. Sexton v. Rogers C. B. Morton et al., Civil No. F-9-73, D. Alaska.

Continued

Suits for Judicial Review

C. Burglin & R. C. Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-15-73, D. Alaska.

C. Burglin & Helen Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-19-73, D. Alaska.

C. Burglin, Earnest G. Carter, Dora A. Carter, & Michael F. Scanlan v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. F-21-73, D. Alaska.

Actions consolidated by order dated July 23, 1974. Judgment for defendant, Aug. 5, 1974; aff'd, 527 F.2d 486 (9th Cir. 1976); cert. denied, 425 U.S. 973 (1976).

Steve Shapiro v. Bishop Coal Co., 83 I.D. 59 (1976)

Bishop Coal Co. v. Thomas S. Kleppe, No. 76-1368, United States Court of Appeals, 4th Cir. Suit pending.

John W. Shaw, A-29143 (Apr. 5, 1963)

John W. Shaw v. Stewart L. Udall, Secretary of the Interior, Civil No. 63-602, D. Ore. Aff'd, 264 F. Supp. 390 (1967); appeal docketed Mar. 13, 1967; appeal dismissed.

Michael Shearn, 24 IBLA 259 (1976)

Michael Shern v. Thomas S. Kleppe, Secretary of the Interior & Arthur W. Zimmerman, Director of the New Mexico State Office of the Bureau of Land Management, Civil No. CIV-76-338-P, D.N.M. Judgment for defendant, Feb. 22, 1977; aff'd, Sept. 17, 1977.

Shell Oil Co., A-30575 (Oct. 31, 1966), Chargeability of Acreage Embraced in Oil & Gas Lease Offers, 71 I.D. 337 (1964)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulated dismissal, Aug. 19, 1968.

Estate of Albin (Alvin) Shemany, 7 IBIA 70 (1978)

Edward, Clara & Alice Longhat v. Cecil Andrus, Secretary of the Interior, Civil No. CIV 78-0929-D, W.D. Okla. Judgment for defendant, Dec. 31, 1979; appeal filed Jan. 21, 1980.

Sinclair Oil & Gas Co., 75 I.D. 155 (1968)

Sinclair Oil & Gas Co. v. Stewart L. Udall, Secretary of the Interior, et al., Civil No. 5277, D. Wyo. Judgment for defendant, sub nom. Atlantic Richfield Co. v. Walter J. Hickel, 303 F. Supp. 724 (1969); aff'd, 432 F.2d 587 (10th Cir. 1970); no petition.

Charles T. Sink, 82 I.D. 535 (1975)

Charles T. Sink v. Thomas S. Kleppe, Secretary of the Interior - Mining Enforcement & Safety Administration (MESA), No. 75-1292, United

States Court of Appeals, 4th Cir. Vacated without prejudice to plaintiff's rights, 529 F.2d 601 (4th Cir. 1975).

Skelly Oil Co., 16 IBLA 264 (1974)

Skelly Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-411, D.N.M. Judgment for plaintiff, Aug. 7, 1975 (opinion); no appeal.

Dorothy Smith, Keith C. Hayes, 44 IBLA 25 (1979)

Karen Hayes, Administratrix of the Estate of Keith C. Hayes, Deceased; Dorothy Smith v. Cecil Andrus, Secretary of the Interior, Civil No. C-LV-79-369-HEC, D. Nev. Suit pending.

Eldon L. Smith, A-30944 (Oct. 15, 1968)

Eldon L. Smith v. Walter J. Hickel, Civil No. 69-245, D. Ariz. Judgment for defendant, Feb. 3, 1970.

James W. Smith, 34 IBLA 146 (1978)

James W. Smith v. U.S., Cecil Andrus, Secretary of the Interior, Frank Gregg, Dir. BLM, Edward L. Hastey, as Cal. State Dir., BLM, Civil No. 79-0042-E, S.D. Cal. Suit pending.

L. B. Smith et al., A-30447 (Oct. 29, 1965)

Charles J. Babington v. Stewart L. Udall, Civil No. 3048-65. Dismissed without prejudice for failure of prosecution, May 1, 1967; no appeal.

Stanley C. Soho, A-28135 (Aug. 19, 1959), A-28135 Supp. (July 17, 1961), Supplemented by decision dated Feb. 1, 1963, by Director, Bureau of Land Management, approved by the Secretary Mar. 18, 1963

Robert V. Ferry & Irving Baker v. Stewart L. Udall, Civil No. 1648 Tuc., D. Ariz. Judgment for defendant, Sept. 3, 1963; aff'd, 336 F.2d 706 (9th Cir. 1964); cert. denied, 381 U.S. 904 (1965).

Stanley C. Soho et al., A-28175 (Apr. 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., D. Ariz. Case dismissed, Jan. 17, 1961; no appeal.

Walter M. Sorensen, 32 IBLA 345 (1977)

Walter M. Sorensen v. Cecil D. Andrus, Secretary of the Interior, & Daniel P. Baker, State Director, Bureau of Land Management, Civil No. C77-250, D. Wyo. Aff'd, Sept. 12, 1978.

Suits for Judicial Review

Southern Pacific Co., 76 I.D. 1 (1969)

Southern Pacific Co. v. Walter J. Hickel, Secretary of the Interior, Civil No. S-1274, D. Cal. Judgment for defendant, Dec. 2, 1970 (opinion); no appeal.

Southern Pacific Co., Louis G. Wedekind, 77 I.D. 177 (1970), 20 IBLA 365 (1975)

George C. Laden, Louis Wedekind, Mrs. Vern Lear, Mrs. Arda Fritz, & Helen Laden Wagner, heirs of George H. Wedekind, Deceased v. Rogers C. B. Morton et al., Civil No. R-2858, D. Nev. On June 20, 1974, remanded for further agency proceedings as originally ordered in 77 I.D. 177; Dist. Ct. reserves jurisdiction; supplemental complaint filed, Aug. 1, 1975; judgment for defendant, Nov. 29, 1976; appeal filed, Jan. 27, 1977.

Southport Land & Commercial Co., Sacramento 075330 (Jan. 15, 1964)

Southport Land & Commercial Co. v. Stewart L. Udall et al., Civil No. 42385, N.D. Cal. Dismissed as to defendant Stewart Udall, 244 F. Supp. 172 (1965); aff'd, 371 F.2d 526 (9th Cir. 1967); no petition.

Southwest Welding & Manufacturing Division, Yuba Consolidated Industries, Inc., 69 I.D. 173 (1962)

Southwest Welding v. U.S., Civil No. 68-1658-CC, C.D. Cal. Judgment for plaintiff, Jan. 14, 1970; appeal dismissed, Apr. 6, 1970.

Southwestern Petroleum Corp. et al., 71 I.D. 206 (1964)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 5773, D.N.M. Judgment for defendant, Mar. 8, 1965; aff'd, 361 F.2d 650 (10th Cir. 1966); no petition.

Standard Oil Co. of California et al., 76 I.D. 271 (1969)

Standard Oil Co. of California v. Walter J. Hickel et al., Civil No. A-159-69, D. Alaska. Judgment for plaintiff, 317 F. Supp. 1192 (1970); aff'd sub nom. Standard Oil Co. of Cal. v. Rogers C. B. Morton et al., 450 F.2d 493 (9th Cir. 1971); no petition.

Standard Oil Co. of Texas, 71 I.D. 257 (1964)

California Oil Co. v. Secretary of the Interior, Civil No. 5729, D.N.M. Judgment for plaintiff, Jan. 21, 1965; no appeal.

Starling Brokers et al., 6 IBLA 237 (1972)

Hillin L. Arnold et al. v. Rogers C. B. Morton et al., Civil No. A-157-72 Civ., D. Alaska

Judgment for defendant, Mar. 20, 1974; rev'd & remanded, 529 F.2d 1101 (9th Cir. 1976).

Ross Stegman, A-30812 (Nov. 21, 1967), U.S. v. Adrian Edwards, 9 IBLA 197 (1973)

Ross Stegman v. Stewart L. Udall, Civil No. 6953 Phx., D. Ariz. Remanded to Hearing Examiner for taking of further evidence, Dec. 12, 1969.

Adrian Edwards, Trustee for Ross Stegman, & real party in interest v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-58-PCT-CAM, D. Ariz. Judgment for plaintiff, Sept. 10, 1975; rev'd, Oct. 26, 1978.

Billy Stewart, N.M. 4200, etc., approved by the Secretary, May 2, 1969.

D. L. Hannifin v. Walter J. Hickel et al., Civil No. 8074, D.N.M. Judgment for defendant, Jan. 6, 1970; remanded, May 25, 1970; judgment for defendant, May 28, 1970; aff'd, 444 F.2d 200 (10th Cir. 1971); no petition.

Joe Stewart, 33 IBLA 225 (1977)

Joe Stewart v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-1038, D. Idaho. Suit pending.

Elaine S. Stickelman, 9 IBLA 327 (1973)

Elaine S. Stickelman v. U.S. & Dept. of the Interior, et al., Civil No. LV-2112, D. Nev. Judgment for defendant, Aug. 29, 1975; amended order judgment for defendant, Sept. 4, 1975.

Omar Stratman, 16 IBLA 222 (1974)

Omar Stratman v. The Department of the Interior, Bureau of Land Management, Civil No. A74-103, D. Alaska. Remanded to the Department, May 6, 1976; appeal filed, June 30, 1976.

Florence Emily Tagala v. Amanda Nellie Ruth Price, A-30715 (Nov. 10, 1966), Florence Emily Tagala v. Norman C. Gorsuch, Special Administrator of the Estate of Amanda Price, A-31241 (Jan. 9, 1970)

Amanda Price v. Udall, Civil No. 33-67, D. Alaska. Judgment for plaintiff, 280 F. Supp. 393 (1968); remanded to Bureau of Land Management, 411 F.2d 589 (9th Cir. 1969); no petition.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman et al. v. Stewart L. Udall, Civil No. 1852-62. Judgment for defendant, Nov. 1, 1962 (opinion); rev'd, 324 F.2d 411 (1963); cert. granted, 376 U.S. 961 (1964); Dist. Ct. aff'd, 380 U.S. 1 (1965); rehearing denied, 380 U.S. 989 (1965).

Suits for Judicial Review

Texaco, Inc., 75 I.D. 8 (1968)

Texaco Inc., a Corp. v. Secretary of the Interior, Civil No. 446-68. Judgment for plaintiff, 295 F. Supp. 1297 (1969); aff'd in part & remanded, 437 F.2d 636 (1970); aff'd in part & remanded, July 19, 1972.

Texas Construction Co., 64 I.D. 97 (1957), reconsideration denied, IBCA-73 (June 18, 1957)

Texas Construction Co. v. U.S., Ct. Cl. No. 224-58. Stipulated judgment for plaintiff, Dec. 14, 1961.

Estate of Tim Tieyah, 7 IBIA 234 (Oct. 17, 1979)

Marie Tieyah Carr v. Cecil Andrus, Secretary of the Interior, Civil No. CIV 79-1300-D, D. Okla. Suit pending.

Albert Thomas et ux. (Contestees) v. Sam A. DeVilbiss et ux. (Contestants), 10 IBLA 56 (1973)

Albert & Ellora Thomas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-139-TUC-WCF, D. Ariz. Judgment for defendant, 408 F. Supp. 1361 (1976); aff'd, 552 F.2d 871 (9th Cir. 1977).

Estate of John Thomas, Deceased Cayuse Allottee No. 223 & Estate of Joseph Thomas, Deceased, Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil No. 859-581. Judgment for defendant, Sept. 18, 1958; aff'd, 270 F.2d 319 (1959); cert. denied, 364 U.S. 814 (1960); rehearing denied, 364 U.S. 906 (1960).

Thor-Westcliffe Development, Inc., 70 I.D. 134 (1963)

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, Civil No. 5343, D.N.M. Dismissed with prejudice, June 25, 1963.

See also:

Thor-Westcliffe Development, Inc. v. Stewart L. Udall et al., Civil No. 2406-61. Judgment for defendant, Mar. 22, 1962; aff'd, 314 F.2d 257 (1963); cert. denied, 373 U.S. 951 (1963).

Richard K. Todd et al., 68 I.D. 291 (1961)

Bert F. Duesing v. Stewart L. Udall, Civil No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion); aff'd, 350 F.2d 748 (1965); cert. denied, 383 U.S. 912 (1966).

Atwood et al. v. Stewart L. Udall, Civil Nos. 293-62 - 299-62, incl. Judgment for defendant, Aug. 2, 1962; aff'd, 350 F.2d 748 (1965); no petition.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, Sept. 17, 1963; no appeal.

Appeal of Toke Cleaners, 81 I.D. 258 (1974)

Thom Properties, Inc., d/b/a Toke Cleaners & Launderers v. U.S., Department of the Interior, Bureau of Indian Affairs, Civil No. A3-74-99, D.N.D. Stipulation for dismissal & order dismissing case, June 16, 1975.

Estate of Phillip Tooisgah, 4 IBIA 189; 82 I.D. 541 (1975)

Jonathan Morris & Velma Tooisgah v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0037-D, W.D. Okla. Suit pending.

Tree Land Nursery, Inc., IBCA-436 (Oct. 31, 1966)

Tree Land Nursery, Inc. v. U.S., Ct. Cl. 238-67. Judgment for plaintiff, May 13, 1969.

Tyee Construction Co., IBCA-112 & 113 (Apr. 30, 1958)

Tyee Construction Co. v. U.S., Ct. Cl. No. 312-60. Judgment for defendant, June 1, 1962; no appeal.

Union Oil Co. Bid on Tract 228, Brazos Area, Texas Offshore Sale, 75 I.D. 147 (1968), 76 I.D. 69 (1969)

The Superior Oil Co. et al. v. Stewart L. Udall, Civil No. 1521-68. Judgment for plaintiff, July 29, 1968, modified, July 31, 1968; aff'd, 409 F.2d 1115 (1969); dismissed as moot, June 4, 1969; no petition.

Union Oil Co. of California, 71 I.D. 287 (1964)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 2595-64. Judgment for defendant, Dec. 27, 1965; no appeal.

Union Oil Co. of California et al., 71 I.D. 169 (1964), 72 I.D. 313 (1965)

Penelope Chase Brown et al. v. Stewart Udall, Civil No. 9202, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.

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Suits for Judicial Review

- Equity Oil Co. v. Stewart L. Udall, Civil No. 9462, D. Colo. Order to Close Files and Stay Proceedings, Mar. 25, 1967.
- Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 9464, D. Colo. Order to Close Files and Stay Proceedings, Mar. 25, 1967.
- Harlan H. Hugg et al. v. Stewart L. Udall, Civil No. 9252, D. Colo. Order to Close Files and Stay Proceedings, Mar. 25, 1967.
- Barnette T. Napier et al. v. Secretary of the Interior, Civil No. 8691, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.
- John W. Savage v. Stewart L. Udall, Civil No. 9458, D. Colo. Order to Close Files and Stay Proceedings, Mar. 25, 1967.
- The Oil Shale Corp. et al. v. Secretary of the Interior, Civil No. 8680, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dis. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.
- The Oil Shale Corp. et al. v. Stewart L. Udall, Civil No. 9465, D. Colo. Order to Close Files & Stay Proceedings, Mar. 25, 1967.
- Joseph B. Umpleby et al. v. Stewart L. Udall, Civil No. 8685, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.
- Union Oil Co. of California, a Corp. v. Stewart L. Udall, Civil No. 9461, D. Colo. Order to Close Files & Stay Proceedings, Mar. 25, 1967.
- Union Oil Co. of California, Ramon P. Colvert, 65 I.D. 245 (1958)
- Union Oil Co. of California v. Stewart L. Udall, Civil No. 3042-58. Judgment for defendant, May 2, 1960 (opinion); aff'd, 289 F.2d 790 (1961); no petition.
- Union Pacific R.R., 72 I.D. 76 (1965)
- The State of Wyoming & Gulf Oil Corp. v. Stewart L. Udall, etc., Civil No. 4913, D. Wyo. Dismissed with prejudice, 255 F. Supp. 481 (1966); aff'd, 379 F.2d 635 (10th Cir. 1967); cert. denied, 389 U.S. 985 (1967).
- United Mine Workers of America v. Inland Steel Co., 83 I.D. 87 (1976)
- United Mine Workers of America v. Thomas S. Kleppe, No. 76-1377, United States Court of Appeals, 7th Cir. Board's decision aff'd, 561 F.2d 1258 (7th Cir. 1977).
- United Mine Workers of America, Local Union No. 1993 v. Consolidation Coal Co., 84 I.D. 254 (1977)
- Local Union No. 1993, United Mine Workers of America v. Cecil D. Andrus, No. 77-1582, United States Court of Appeals, D.C. Cir. Suit pending.
- U.S. v. Alonzo A. Adams et al., 64 I.D. 221 (1957), A-27364 (July 1, 1957)
- Alonzo A. Adams et al. v. Paul B. Witmer et al., Civil No. 1222-57-Y, S.D. Cal. Complaint dismissed, Nov. 27, 1957 (opinion); rev'd & remanded, 271 F.2d 29 (9th Cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F.2d 37 (9th Cir. 1959)
- U.S. v. Alonzo Adams, Civil No. 187-60-WM, S.D. Cal. Judgment for plaintiff, Jan. 29, 1962 (opinion); judgment modified, 318 F.2d 861 (9th Cir. 1963); no petition.
- U.S. v. Ken & Kenneth D. Alexander, 17 IBLA 421 (1974)
- Ken & Kenneth D. Alexander v. The Secretary of the Interior, Civil No. 75-465, D. Ore. Judgment for defendant, July 5, 1978.
- U.S. v. A. F. Anderson et al., 15 IBLA 123 (1974)
- A. F. Anderson, Wilton Dale, William F. Mackey, Arthur Roberts, Kenneth Roberts, Hugh Scott, Ester Desmarais, Louis D. Desmarais, Ernest L. Meunier, et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-151, D. Wyo. Judgment for defendant, Nov. 7, 1975.
- Consolidated with Walter H. Burkhardt et al. v. Rogers C. B. Morton et al., Civil No. C74-152, D. Wyo., for purposes of appeal by order of Nov. 19, 1975; dismissed, Nov. 28, 1975.
- U.S. v. Arizona Exploration Co. et al., A-28876 (June 22, 1962)
- Blaine J. Lord et al. v. Roy T. Helmandollar et al., Civil No. 987-63. Judgment for defendants, Sept. 30, 1963; appeal dismissed, 348 F.2d 780 (1965); cert. denied, 383 U.S. 928 (1966); rehearing denied, 384 U.S. 947 (1966).

Suits for Judicial Review

U.S. v. Melton E. Baker, 23 IBLA 319 (1976)

Melton E. Baker v. U.S., Thomas Kleppe, Individually & as Secretary of the Interior & Stanley Gurnewald, Individually & as District Ranger of the Forest Service of the U.S. Dept. of Agriculture, Civil No. CIV 76-408 PCT WPC, D. Ariz. Complaint dismissed, Apr. 25, 1977; appeal filed, June 21, 1977.

U.S. v. E. A. & Esther Barrows, 76 I.D. 299 (1969)

Esther Barrows, as an individual & as Executrix of the Last Will of E. A. Barrows, deceased v. Walter J. Hickel, Civil No. 70-215-CC, C.D. Cal. Judgment for defendant, Apr. 20, 1970; aff'd, 447 F.2d 80 (9th Cir. 1971).

U.S. v. A. O. Bartell, 31 IBLA 47 (1977)

A. O. Bartell v. Cecil Andrus, Secretary of the Interior, Civil No. 77-667, D. Ore. Suit pending.

U.S. v. Charles Thomas Beaird, 31 IBLA 203 (1977)

Charles Thomas Beaird v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F-77-31, D. Alaska. Suit pending.

U.S. v. J. L. Block, 80 I.D. 571 (1973)

J. L. Block v. Rogers Morton, Secretary of the Interior, Civil No. LV-74-9, BRT, D. Nev. Judgment for defendant, June 6, 1975; rev'd & remanded with instructions to remand to the Secretary of the Interior, Mar. 29, 1977; no petition.

U.S. v. Blue Bell Gold Mining Co. et al., 17 IBLA 182 (1971)

Blue Bell Gold Mining Co. v. Rogers C. B. Morton, Secretary of the Interior et al., Civil No. C74-698 S, W.D. Wash. Judgment for defendant, Sept. 18, 1975; no appeal.

U.S. v. Catherine R. Blythe, 16 IBLA 94 (1975)

Catherine R. Blythe v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV 75-750 B, D.N.M. Dismissed, Feb. 28, 1977; aff'd, Nov. 16, 1977.

U.S. v. Lloyd W. Booth, 76 I.D. 73 (1969)

Lloyd W. Booth v. Walter J. Hickel, Civil No. 42-69, D. Alaska. Judgment for defendant, June 30, 1970; no appeal.

U.S. v. R. B. Borders, A-28624 (Oct. 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 414, D. Nev. Judgment for defendant, Aug. 19, 1964 (opinion); no appeal.

U.S. v. Jack Zemmy Boyd, Jr., 39 IBLA 321 (1979)

Jack Zemmy Boyd, Jr. v. Cecil D. Andrus, Secretary of the Interior, Civil No. A79-322, D. Alaska. Judgment for defendant, Mar. 14, 1980; appeal filed, Apr. 9, 1980.

U.S. v. Alice A. & Carrie H. Boyle, 76 I.D. 61, 318 (1969), reconsideration denied, Jan. 22, 1970

Alice A. & Carrie H. Boyle v. Rogers C. B. Morton, Secretary of the Interior, Civil No. Civ-71-491 Phx WEC, D. Ariz. Judgment for plaintiff, May 4, 1972; rev'd & remanded, 519 F.2d 551 (9th Cir. 1975); cert. denied, 423 U.S. 1033 (1975).

U.S. v. R. W. Brubaker et al., A-30636 (July 24, 1968); 9 IBLA 281, 80 I.D. 261 (1973)

R. W. Brubaker, a/k/a Ronald W. Brubaker, B. A. Brubaker, a/k/a Barbara A. Brubaker, & William J. Mann, a/k/a W. J. Mann v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-1228 EC, C.D. Cal. Dismissed with prejudice, Aug. 13, 1973; aff'd, 500 F.2d 200 (9th Cir. 1974); no petition.

U.S. v. Joe W. Bryant, 25 IBLA 247 (1976)

Joe E. Bryant v. Secretary of the Interior, Civil No. A76-84, D. Alaska. Remanded to the Agency for final consideration on the merits, Jan. 5, 1978.

U.S. v. Henrietta & Andrew Julius Bunkowski, 5 IBLA 102; 79 I.D. 43 (1972)

Henrietta & Andrew Julius Bunkowski v. L. Paul Applegate, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. R-76-182-BRT, D. Nev. Suit pending.

U.S. v. Calhoun & Howell of Oregon, Ltd., U.S. v. Lee Temple, A-31004 (Aug. 29, 1969)

Calhoun & Howell of Oregon Ltd. v. Walter J. Hickel, Civil No. 70-155, D. Ore. Judgment for defendant, Sept. 24, 1970; no appeal.

U.S. v. John C. Chapman et al., A-30581 (July 16, 1968)

John C. Chapman et al. v. U.S., Civil No. 69-12 Pct., D. Ariz. Judgment for defendant, Jan. 18, 1972; no appeal.

U.S. v. Charleston Stone Products, Inc., 9 IBLA 94 (1973)

Charleston Stone Products Co. v. Rogers Morton, Secretary of the Interior, Civil No. LV-2039-BRT, D. Nev. Vacated & remanded to the Dept. for further proceedings, Nov. 7, 1974 (opinion); aff'd & remanded, 553 F.2d 1209 (9th Cir. 1977); rev'd & remanded, 436 U.S. 604 (1978).

Suits for Judicial Review

U.S. v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. U.S., Civil No. C-164-61, D. Utah. Complaint dismissed, Jan. 9, 1962; no appeal.

Nick Chournos et al. v. U.S. et al., Civil No. C-238-62, D. Utah. Dismissed, June 28, 1963; aff'd, 335 F.2d 918 (10th Cir. 1964); no petition.

U.S. v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil No. 191-59. Judgment for defendant, Apr. 4, 1960; no appeal.

U.S. v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (1971)

Clear Gravel Enterprises, Inc. v. Nolan Keil, State Dir., Bureau of Land Management, State of Nevada, & Rolla Chandler, Chief Div. of Technical Services, Bureau of Land Management, Reno, Nevada, Civil No. LV-1654, D. Nev. Judgment for defendant, May 4, 1972; aff'd, Oct. 9, 1974; rehearing denied, Jan. 13, 1975; cert. denied, Apr. 21, 1975.

U.S. v. J. R. Clements, A-27751 (Dec. 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil No. 560-59. Judgment for defendant, Jan. 13, 1960; no appeal.

U.S. v. Elsie Cody, 1 IBLA 92 (1970)

Elsie Cody v. Walter J. Hickel, Civil No. 1-70-125, D. Idaho. Remanded to the Secretary of the Interior for taking of additional evidence, Dec. 6, 1971; appeal withdrawn, Mar. 10, 1972.

U.S. v. Alfred Coleman, A-28557 (Mar. 27, 1962)

U.S. v. Alfred Coleman, Civil No. 63-956-WB, S.D. Cal. Judgment for defendant, Feb. 25, 1965 (opinion); remanded, 363 F.2d 190 (9th Cir. 1966); aff'd, 379 F.2d 555 (9th Cir. 1967); cert. granted, 389 U.S. 970 (1967); rev'd & remanded to 9th Cir., 390 U.S. 599 (1968); rehearing denied, 391 U.S. 961 (1968); aff'd, 405 F.2d 72 (9th Cir. 1968); cert. denied, 394 U.S. 907 (1969).

U.S. v. Ford M. Converse, 72 I.D. 141 (1965)

Ford M. Converse v. Stewart Udall, Civil No. 65-581, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); aff'd, 399 F.2d 616 (9th Cir. 1968); cert. denied, 393 U.S. 1025 (1969).

U.S. v. Jesse W. Crawford, A-30820 (Jan. 29, 1968)

Jesse W. Crawford v. Stewart L. Udall, Civil No. 6969 Phx., D. Ariz. Judgment for defen-

dant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971); no petition.

U.S. v. Jerry L. Crow, 28 IBLA 345 (1977)

Jerry L. Crow v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F77-12-CIV, D. Alaska. Judgment for defendant, June 23, 1978.

U.S. v. Bradley F. Denham, 29 IBLA 185 (1977)

Bradley F. Denham v. Cecil Andrus, Secretary of the Interior, Civil No. CIV77-392 Phx WEC, D. Ariz. Suit pending.

U.S. v. Alvis F. Denison et al., 71 I.D. 144 (1964), 76 I.D. 233 (1969)

Marie W. Denison, individually & as executrix of the Estate of Alvis F. Denison, deceased v. Stewart L. Udall, Civil No. 963, D. Ariz. Remanded, 248 F. Supp. 942 (1965).

Leo E. Shoup v. Stewart L. Udall, Civil No. 5822-Phx., D. Ariz. Judgment for defendant, Jan. 31, 1972.

Reid Smith v. Stewart L. Udall, etc., Civil No. 1053, D. Ariz. Judgment for defendant, Jan. 31, 1972; aff'd, Feb. 1, 1974; cert. denied, Oct. 15, 1974.

U.S. v. J. S. Devenny, A-30289 (Aug. 6, 1964)

J. S. Devenny v. Stewart L. Udall, Civil No. 6283, W.D. Wash. Dismissed, June 22, 1966; no appeal.

U.S. v. Nelson E. Devine & Raymond E. Bryant, A-30435 (Apr. 28, 1965), 2 IBLA 258 (1971)

U.S. v. Raymond E. Bryant, Civil No. 9929, E.D. Cal. Remanded to Dept. for exercise of discretion, Sept. 10, 1969; decision of BLM dated Jan. 16, 1970, aff'd by the Board of Land Appeals, May 10, 1971.

U.S. v. Aloys A. & Doris E. L. Dietemann, 26 IBLA 356 (1976)

Aloys A. & Doris E. Dietemann v. Thomas S. Kleppe, Secretary of the Interior, Curtis Berklund, Director of the Bureau of Land Management, et al., Civil No. 76-3532 RMT, C.D. Cal. Summary judgment for defendant, Feb. 9, 1977; no appeal.

U.S. v. Francis Dlouhy et al., A-27668 (Sept. 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil No. 405-59. Judgment for defendant, May 3, 1960; appeal dismissed, Nov. 28, 1960.

Suits for Judicial Review

U.S. v. The Dredge Corp., A-28022 (Dec. 18, 1959)

The Dredge Corp. v. J. Russell Penny, Civil No. 396, D. Nev. Judgment for defendant, Sept. 25, 1962; remanded, 338 F.2d 456 (9th Cir. 1964); judgment for plaintiff, Aug. 8, 1966; judgment for defendants, 398 F.2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

U.S. v. The Dredge Corp., 7 IBLA 136 (1972)

The Dredge Corp. v. Rogers C. B. Morton et al., Civil No. LV-2029, D. Nev. Stipulated dismissal, Feb. 12, 1974.

U.S. v. Maurice Duvall et al., 1 IBLA 103 (1970)

Maurice Duval et al. v. Rogers C. B. Morton, Civil No. 71-684, D. Ore. Dismissed, 347 F. Supp. (1972); aff'd, Dec. 19, 1973 (opinion).

U.S. v. Elkhorn Mining Co., 2 IBLA 383 (1971)

Elkhorn Mining Co. v. Rogers Morton, Civil No. 2111, D. Mont. Judgment for defendant, Jan. 19, 1973; no appeal.

U.S. v. Ralph Fairchild, A-30803 (Jan. 19, 1968)

Minerals Trust Corp. v. Stewart L. Udall, Civil No. 6960 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971).

U.S. v. Kathryn R. Fitzgerald, A-30973 (July 25, 1969)

Kathryn R. Fitzgerald & John Holden v. Walter J. Hickel, Civil No. 70-421-Phx., D. Ariz. Judgment for defendant, Nov. 23, 1970.

U.S. v. Harlan H. Foresyth, 15 IBLA 43 (1974),
Petition for review granted by order of Oct. 30, 1975

Earl J. Brubaker, Frank Jobe, Jr. & Rexford L. Mitchell v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-W-280, D. Colo. Suit pending.

U.S. v. Everett Foster et al., 65 I.D. 1 (1958)

Everett Foster et al. v. Fred A. Seaton, Civil No. 344-58. Judgment for defendants, Dec. 5, 1958 (opinion); aff'd, 271 F.2d 836 (1959); no petition.

U.S. v. Andrew L. Freese II, 37 IBLA 7 (1978)

Andrew L. Freese II v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV 78-1314, D. Idaho. Suit pending.

U.S. v. Jack L. Gardener, 18 IBLA 175 (1974)

Jack L. Gardener v. Secretary of the Interior, Civil No. 75-1413-R, C.D. Cal. Judgment for defendant, June 16, 1975; notice of appeal filed, Aug. 8, 1975.

U.S. v. Fred & Eileen Garner, 30 IBLA 42 (1977)

Fred & Eileen Garner v. U.S. et al., Civil No. 78-0314, D. Colo. Suit pending.

U.S. v. Fred Garula, A-29948 (June 3, 1964)

Fred Garula v. Stewart L. Udall, Civil No. 8998, D. Colo. Judgment for plaintiff, 268 F. Supp. 910 (1967); rev'd, 405 F.2d 1181 (10th Cir. 1968); no petition.

U.S. v. Golden Eagle Mining Corp., A-30864
(Sept. 25, 1967)

Golden Eagle Mining Corp. v. Stewart L. Udall, Secretary of the Interior, Civil No. S-937, E.D. Cal. Dismissed for lack of prosecution, Oct. 6, 1969; no appeal.

U.S. v. Golden Grigg et al., 82 I.D. 123 (1975)

Golden T. Grigg, LeFawn Grigg, Fred Baines, Otis H. Williams, Kathryn Williams, Lovell Taylor, William A. Anderson, Saragene Smith, Thomas M. Anderson, Bonnie Anderson, Charles L. Taylor, Darlene Baines, Luann & Paul E. Hogg v. U.S., Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-75, D. Idaho. Judgment for defendant, Nov. 6, 1979.

U.S. v. Gunsight Mining Co., 5 IBLA 62 (1972)

Gunsight Mining Corp. v. Rogers C. B. Morton, Civil No. 72-92 Tuc, D. Ariz. Dismissed, Sept. 11, 1973; no appeal.

U.S. v. C. V. Hallenbeck et al., 21 IBLA 296 (1975)

Charles V. Hallenbeck, Jr. & Clyde A. Hallenbeck, as Individuals, as Trustees, & as Members of a Class v. Bureau of Reclamation, Civil No. 75-M-786, D. Colo. Judgment for defendant, Sept. 2, 1976; aff'd, 590 F.2d 852 (10th Cir. 1979).

U.S. v. Urban Harenberg et al., 11 IBLA 153 (1973)

Century Industries-Flagstaff, an Arizona Corp. (successor-in-interest to Urban, LaVaun, Sylvan L. & Beth Harenberg, & to Flagstaff Service & Materials Co., an Arizona Corp., bankrupt) v. U.S., Rogers Morton, Secretary of the Interior, et al., Civil No. 75-157 PCT WPC, D. Ariz. Suit pending.

Suits for Judicial Review

U.S. v. Richard P. Haskins, A-30737 (Dec. 19, 1966),
3 IBLA 77 (1971)

Richard P. Haskins for Himself & as Admin. of The Estate of Bartholomew H. Haskins, Deceased v. Udall, Civil No. 67-1815-CC, C.D. Cal. Judgment for defendant, Apr. 15, 1968; remanded to the Director, Bureau of Land Management for an exercise of discretion, Oct. 3, 1969.

U.S. v. Richard P. Haskins, Civil No. 72-246 JWC, C.D. Cal. Judgment for plaintiff, May 18, 1972 (opinion); rehearing denied, June 28, 1972; aff'd & remanded for further proceedings, Oct. 25, 1974; no petition.

U.S. v. Gerald D. Heden et al., 19 IBLA 326 (1975)

Gerald D. & Sharon A. Heden, John D. & Diane E. Prichard v. The Secretary of the Interior, Civil No. 75-543, D. Ore. Dismissed, Aug. 4, 1977; aff'd, Mar. 19, 1980.

U.S. v. Henault Mining Co., 73 I.D. 184 (1966)

Henault Mining Co. v. Harold Tysk et al., Civil No. 634, D. Mont. Judgment for plaintiff, 271 F. Supp. 474 (1967); rev'd & remanded for further proceedings, 419 F.2d 766 (9th Cir. 1969); cert. denied, 398 U.S. 950 (1970); judgment for defendant, Oct. 6, 1970.

U.S. v. Charles H. Henrikson et al., 70 I.D. 212 (1963)

Charles H. Henrikson et al. v. Stewart L. Udall et al., Civil No. 41749, N.D. Cal. Judgment for defendant, 229 F. Supp. 510 (1964); aff'd, 350 F.2d 949 (9th Cir. 1965); cert. denied, 384 U.S. 940 (1966).

U.S. v. Taylor T. Hicks et al., A-30780 (Oct. 24, 1967)

Taylor T. Hicks et al. v. U.S., Stewart L. Udall, Secretary of the Interior, Civil No. Civ.-1202 Pct., D. Ariz. Judgment for defendant, Mar. 26, 1970.

U.S. v. Ernest Higbee et al., A-31063 (Apr. 1, 1970)

Ernest Higbee et al. v. Rogers C. B. Morton et al., Civil No. 1674, D. Nev. Judgment for defendant, May 5, 1972; vacated & remanded, July 22, 1974; amended, Sept. 13, 1974; vacated & remanded to the Secretary for taking of further evidence for reconsideration of the issues, Dec. 19, 1974.

U.S. v. Humboldt Placer Mining Co. & Del De Rosier, 79 I.D. 709 (1972)

Humboldt Placer Mining Co. & Del De Rosier v. Secretary of the Interior, Civil No. S-2755, E.D. Cal. Dismissed with prejudice, June 12, 1974; aff'd, 549 F.2d 622 (9th Cir. 1977); petition for cert. filed, June 25, 1977.

U.S. v. Ideal Cement Co., 5 IBLA 235 (1972)

Ideal Basic Industries, Inc., formerly known as Ideal Cement Co. v. Rogers C. B. Morton, Civil No. J-12-72, D. Alaska. Judgment for defendant, Feb. 25, 1974; motion to vacate judgment denied, May 6, 1974; aff'd, 542 F.2d 1364 (9th Cir. 1976).

U.S. v. Independent Quick Silver Co., 72 I.D. 367 (1965)

Independent Quick Silver Co., an Oregon Corp. v. Stewart L. Udall, Civil No. 65-590, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); appeal dismissed.

U.S. v. Leroy S. Johnson, et al., 39 IBLA 337 (1979)

Leroy S. Johnson, Joseph I. Barlow, Frederick Merrill Jessop, Daniel Barlow, Edson P. Jessop, Fred M. Jessop, Dan C. Jessop & Samuel S. Barlow v. U.S., Cecil D. Andrus, Secretary of the Interior, Civil No. C-79-0486, D. Utah. Suit pending.

U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)
See M. G. Johnson

U.S. v. R. B. Johnson, A-30405 (Oct. 28, 1965)

R. B. Johnson v. Stewart L. Udall, Civil No. 1071, D. Ariz. Judgment for defendant, Nov. 21, 1967; no appeal.

U.S. v. Robert N. Johnson et al., A-30828 (Jan. 29, 1968)

Robert N. Johnson et al. & Thelma A. Johnson as individ. & as Executrix of Nolan F. Fultz estate v. Stewart L. Udall, Civil No. 68-994-AAH, C.D. Cal. Judgment for plaintiff, 292 F. Supp. 738 (1968); no appeal.

U.S. v. David L. & Kathryn King, A-30217 (Dec. 29, 1964)

David L. & Kathryn King v. Bureau of Land Management, Civil No. S2765, E.D. Cal. Dismissed, Oct. 30, 1973; no appeal.

U.S. v. William C. King, 15 IBLA 210 (1974)

William C. King v. U.S., & The Secretary of the Interior, et al., Civil No. 74-151-TUC-JAW, D. Ariz. Judgment for defendant, July 10, 1975; dismissed, Jan. 7, 1977.

U.S. v. Horace J. & Elsie Marie Knowlton, A-30912 (May 21, 1968)

Elsie Marie & Horace J. Knowlton v. Walter J. Hickel, Secretary of the Interior, Civil No. C-191-69, D. Utah. Judgment for defendant, Nov. 13, 1970.

Suits for Judicial Review

U.S. v. Charles W. & Cora A. Kohl, 5 IBLA 298 (1972)

Charles W. & Cora A. Kohl v. Steve Yurich & Rogers C. B. Morton, et al., Civil No. 2155, D. Mont. Dismissed with prejudice, Jan. 17, 1973; no appeal.

U.S. v. Richard Dean Lance, 73 I.D. 218 (1966)

Richard Dean Lance v. Stewart L. Udall et al., Civil No. 1864, D. Nev. Judgment for defendant, Jan. 23, 1968; no appeal.

U.S. v. Lane Minerals, Inc., A-30497 (Mar. 28, 1966)

Lane Minerals, Inc. v. Stewart L. Udall & the Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Civil No. 67-535, D. Ore. Judgment for defendant, Feb. 2, 1970.

U.S. v. Ethel Schell Larsen & Minerals Trust Corp., 9 IBLA 247 (1973)

Ethel Schell Larsen & Minerals Trust Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-119-TUC-JAW, D. Ariz. Judgment for defendant, Sept. 24, 1974; no appeal.

U.S. v. Lost Polack Mining Ass'n, 38 IBLA 101 (1978)

Lost Polack Mining & Exploration Co. v. Cecil Andrus, Secretary of the Interior, Civil No. 79-56 PHX CAM, D. Ariz. Suit pending.

U.S. v. William A. McCall & R. J. Kaltenborn, 1 IBLA 115 (1970)

William A. McCall v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-70 RDF, D. Nev. Judgment for defendant, Oct. 1, 1975.

U.S. v. William A. McCall, Sr., The Dredge Corp., Estate of Olaf H. Nelson, Deceased, Small Tract Applicants Ass'n, Intervenor, 78 I.D. 71 (1971)

William A. McCall, Sr., The Dredge Corp. & Olaf H. Nelson v. John F. Boyles et al., Civil No. 74-68(RDF), D. Nev. Judgment for defendant, June 8, 1976.

U.S. v. William A. McCall, Sr., Estate of Olaf Henry Nelson, Deceased, 7 IBLA 21; 79 I.D. 457 (1972)

William A. McCall, Sr. & the Estate of Olaf Henry Nelson, deceased v. John S. Boyles, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of the Interior,

et al., Civil No. LV-76-155 RDF, D. Nev. Judgment for defendant, Nov. 4, 1977; appeal filed.

U.S. v. Kenneth McClarty, 71 I.D. 331 (1964), 76 I.D. 193 (1969)

Kenneth McClarty v. Stewart L. Udall et al., Civil No. 116, E.D. Wash. Judgment for defendant, May 26, 1966; rev'd & remanded, 408 F.2d 907 (9th Cir. 1969); remanded to the Secretary, May 7, 1969; vacated & remanded to Bureau of Land Management, Aug. 13, 1969.

U.S. v. Charles Maher et al., 5 IBLA 209, 79 I.D. 109 (1972)

Charles Maher & L. Franklin Mader v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-72-153, D. Idaho. Dismissed without prejudice, Apr. 3, 1973.

U.S. v. Mary A. Matthey, 67 I.D. 63 (1960)

U.S. v. Edison R. Nogueira et al., Civil No. 65-220-PH, C.D. Cal. Judgment for defendant, Nov. 16, 1966; rev'd & remanded, 403 F.2d 816 (1968); no petition.

U.S. v. Alvin M. May, A-30675 (July 25, 1968)

Alvin M. May v. Stewart Udall et al., Civil No. R-2107, D. Nev. Judgment for plaintiff, Dec. 15, 1969.

U.S. v. Frank & Wanita Melluzzo, 76 I.D. 160 (1969), 32 IBLA 46 (1977)

Frank & Wanita Melluzzo v. Rogers C. B. Morton, Civil No. CIV 73-308 PHX CAM, D. Ariz. Judgment for defendant, June 19, 1974; aff'd in part & rev'd & remanded in part, 534 F.2d 860 (9th Cir. 1976); no petition.

Frank & Wanita Melluzzo v. Cecil Andrus, Secretary of the Interior, Civil No. CIV-79-282 PHX, CAM, D. Ariz. Judgment for defendant, May 20, 1980.

U.S. v. Frank & Wanita Melluzzo, et al., 76 I.D. 181 (1969); reconsideration, 1 IBLA 37, 77 I.D. 172 (1970)

WJM Mining & Development Co. et al. v. Rogers C. B. Morton, Civil No. 70-679, D. Ariz. Judgment for defendant, Dec. 8, 1971; dismissed, Feb. 4, 1974.

U.S. v. Mineral Ventures, Ltd., 80 I.D. 792 (1973)

Mineral Ventures, Ltd. v. The Secretary of the Interior, Civil No. 74-201, D. Ore. Judgment for defendant, July 10, 1975; vacated & remanded, May 3, 1977; modified amended judgment, Sept. 9, 1977.

Suits for Judicial Review

U.S. v. G. Patrick Morris et al., 82 I.D. 146 (1975)

G. Patrick Morris, Joan E. Roth, Elise L. Neeley, Lyle D. Roth, Vera M. Baltzor (formerly Vera M. Noble), Charlene S. & George R. Baltzor, Juanita M. & Nellie Mae Morris, Milo & Peggy M. Axelsen, & Farm Development Corp. v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-74, D. Idaho. Aff'd in part, rev'd in part, Dec. 20, 1976; rev'd, Nov. 16, 1978.

U.S. v. Ernest Evon Moseley, A-30971 (Dec. 13, 1967)

Ernest E. Moseley v. Udall, Civil No. 6939 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971); no petition.

U.S. v. G. C. (Tom) Mulkern, A-27746 (Jan. 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil No. 299, D. Nev. Judgment for defendant, Feb. 19, 1963 (opinion); aff'd, 326 F.2d 896 (9th Cir. 1964); no petition.

U.S. v. Christian F. Murer, 4 IBLA 242 (1972)

Christian F. Murer v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-3941, D. Colo. Judgment for defendant, Mar. 22, 1973 (oral opinion); no appeal.

U.S. v. National Motor Service Co., 15 IBLA 23 (1974)

National Motor Service Co., Successor to Gary K. Lloyd v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-74-41, D. Idaho. Complaint dismissed with prejudice, Feb. 24, 1976.

U.S. v. Leonard F. Nelson, IBLA 71-57 (Dec. 6, 1972) (Supp. I), 28 IBLA 314 (1977)

Leonard F. Nelson v. Rogers C. B. Morton et al., Civil No. A-3-73, D. Alaska. Dismissed with prejudice, 368 F. Supp. 692 (1974); rev'd & remanded, Jan. 14, 1976; no petition.

U.S. v. Melvin L. Nevitt, A-30030 (July 28, 1964)

U.S. v. Melvin L. Nevitt, Civil No. 3423-SD-C, S.D. Cal. Judgment for plaintiff, Nov. 28, 1966; no appeal.

U.S. v. New Jersey Zinc Co., 74 I.D. 191 (1967)

The New Jersey Zinc Corp., a Del. Corp. v. Stewart L. Udall, Civil No. 67-C-404, D. Colo. Dismissed with prejudice, Jan. 5, 1970.

U.S. v. W. G. & Eva Rose Nickol, 9 IBLA 117 (1973)

W. G. & Eva Rose Nickol v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 9995 D.N.M. Dismissed, Oct. 5, 1973; rev'd & remanded, June 18, 1974; rehearing denied, Sept. 30, 1974; remanded to the Dept. for further proceedings, Jan. 30, 1975; no appeal.

U.S. v. Lloyd O'Callaghan, Sr. et al., 79 I.D. 689 (1972), U.S. v. Lloyd O'Callaghan, Sr., Contest No. R-04845 (July 7, 1975), 29 IBLA 333 (1977)

Lloyd O'Callaghan, Sr., Individually & as Executor of the Estate of Ross O'Callaghan v. Rogers Morton et al., Civil No. 73-129-S, S.D. Cal. Aff'd in part & remanded, May 14, 1974. Judgment for defendant, May 16, 1978, aff'd, May 8, 1980.

U.S. v. Wilma L. Oldaker, A-30378 (Aug. 26, 1965)

Wilma Oldaker v. Stewart L. Udall, Civil No. A-98-65, D. Alaska. Stipulated dismissal with prejudice, Mar. 3, 1967; no appeal.

U.S. v. J. R. Osborne et al., 77 I.D. 83 (1970), 28 IBLA 13 (1976), reconsideration denied by order dated Jan. 4, 1977

J. R. Osborne, individually & on behalf of R. R. Borders et al. v. Rogers C. B. Morton et al., Civil No. 1564, D. Nev. Judgment for defendant, Mar. 1, 1972; remanded to Dist. Ct. with directions to reassess Secretary's conclusion, Feb. 22, 1974; remanded to the Dept. with orders to re-examine the issues, Dec. 3, 1974.

Bradford Mining Corp., Successor of J. R. Osborne, agent for various persons v. Cecil D. Andrus, Secretary of the Interior, Civil No. LV-77-218, RDF, D. Nev. Suit pending.

U.S. v. Pittsburgh Pacific Co., 30 IBLA 388; 84 I.D. 282 (1977)

Pittsburgh Pacific Co. v. U.S., Dept. of the Interior, Cecil Andrus, Joseph W. Goss, Anne Poindexter Lewis, Martin Ritvo, State of South Dakota, Dept. of Environmental Protection & Allen Lockner, Civil No. CIV77-5055, W.D.S.D. Suit pending.

State of South Dakota v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CIV 77-5058, W.D.S.D. Dismissed, Dec. 26, 1978.

U.S. v. Paul C. Poncia et al., 11 IBLA 302 (1973)

Paul C., Opal L., John C., & Dorothy Poncia v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-73-93, D. Idaho. Remanded to the Secretary of Interior for consideration, Sept. 28, 1976.

Suits for Judicial Review

U.S. v. Richard C. Porter et al., A-29882 (Apr. 24, 1964)

Hal W. Eldridge et al. v. Secretary of the Interior, Civil No. 64-353, D. Ore. Judgment for defendant, Dec. 15, 1965 (opinion); no appeal.

U.S. v. E. V. Pressentin et al., A-27495 (Apr. 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil No. 4804, W.D. Wash. Voluntary dismissal by plaintiff entered, July 24, 1959.

E. V. Pressentin et al. v. Fred A. Seaton, Civil No. 1907-59. Judgment for defendant, Jan. 15, 1960; rev'd & remanded, 284 F.2d 195 (1960); see A-30004, 71 I.D. 447 (1964).

U.S. v. E. V. Pressentin & Devisees of the H. S. Martin Estate, 71 I.D. 447 (1964)

E. V. Pressentin, Fred J. Martin, Admin. of H. A. Martin Estate v. Stewart L. Udall & Charles Stoddard, Civil No. 1194-65. Judgment for defendant, Mar. 19, 1969; no appeal.

U.S. v. C. F. Pruess, Sr., A-28641 (Aug. 22, 1961)

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 1331-62. Judgment for defendant, May 12, 1964; remanded, 359 F.2d 615 (1965); judgment for defendant, Jan. 4, 1966; per curiam dec., remanded for transfer to Dist. Ct. for Oregon. Not reported.

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 67-167, D. Ore. Judgment for defendant, 286 F. Supp. 138 (1968); aff'd, 410 F.2d 750 (9th Cir. 1969); cert. denied, 396 U.S. 967 (1969); rehearing denied, 397 U.S. 1003 (1970).

U.S. v. William D. Pulliam et al., 1 IBLA 143 (1970)

William D. Pulliam et al. v. Secretary of the Interior, Civil No. 71-649, D. Ariz. Dismissed on the merits, Mar. 29, 1973; no appeal.

U.S. v. Chester L. Ramsey, 29 IBLA 243 (1977)

Chester Lee Ramsey v. Cecil Andrus, Secretary of the Interior, et al., Civil No. CIV S-77-348-TJM, D. Cal. Suit pending.

U.S. v. Marvin C. Ramsey et al., 14 IBLA 152 (1974)

Marvin C. & Vesta Ruth Ramsey v. The Secretary of the Interior, Civil No. 74-192, D. Ore. Dismissed, May 1, 1975; aff'd, Mar. 22, 1977.

U.S. v. Ramsher Mining & Engineering Co., 13 IBLA 268 (1973)

Ramsher Mining & Engineering Co. v. Secretary of the Interior, Bureau of Land Management,

Civil No. CV-74-3062-WMB, C.D. Cal. Dismissed with prejudice, Feb. 11, 1975; aff'd, Oct. 15, 1976.

U.S. v. Cecil R. Reed, A-30354 (Sept. 29, 1965)

Cecil R. Reed v. Stewart L. Udall et al., Civil No. 1784, D. Nev. Judgment for defendant, Dec. 19, 1967; aff'd, 416 F.2d 377 (9th Cir. 1969); cert. denied, 397 U.S. 924 (1970).

U.S. v. George A. & Dorothy Relyea, A-30909 (June 25, 1968)

George A. & Dorothy Relyea v. Stewart Udall, Secretary of the Interior, Civil No. 3-68-20, D. Idaho. Judgment for defendant, Feb. 19, 1970; no appeal.

U.S. v. Amos D. & Lena S. Robinette, A-31036, A-31133 (Mar. 4, 1970)

Amos D. Robinette v. Rogers C. B. Morton et al., Civil No. 71-1156-HP, C.D. Cal. Complaint dismissed with prejudice, Oct. 22, 1971; appeal dismissed, Apr. 18, 1972.

U.S. v. R. E. & Barbara J. Rodgers, 32 IBLA 77 (1977)

R. E. & Barbara Rodgers v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-119, D. Ore. Suit pending.

U.S. v. Robert A. Rukke, Registered Agent, Valumines, Inc. et al., 32 IBLA 155 (1977)

Robert A. Rukke, Secretary, Valumines, Inc., Milo Moore, William Soren, George Dunlap (aka George Dunlop) & Estate of Eugene Francis Dunlap (aka Gene Dunlop) v. U.S., Civil No. C77-206T, D. Wash. Suit pending.

U.S. v. Dan S. Russell, 40 IBLA 309 (1979)

Dan S. Russell v. John R. McGuire, Individ. & as Chief, Forest Service, DOA, Bob Berglund, Individ. & as Sec. of Agriculture, Frank Gregg, Individ. & as Dir., BLM, Cecil D. Andrus, Individ. & as Secretary of the Interior, Civil No. 79-949, D. Ore. Suit pending.

U.S. v. Robert B. Sainberg, 5 IBLA 270 (1972)

Robert B. Sainberg, Rose Mary Druse, Frank Patrick Vallely, Jr., & William J. Vallely v. Rogers C. B. Morton, Civil No. 72-217-PCT, D. Ariz. Dismissed, 363 F. Supp. 1259 (1973); no appeal.

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U.S. v. Edwin R. Saurers et al., A-30097 (July 9, 1964)

Edwin R. Saurers et al. v. Stewart L. Udall, Civil No. 6245, W.D. Wash. Judgment for defendant, July 19, 1965; no appeal.

U.S. v. Charles L. Seeley et al., A-28127 (Jan. 28, 1960)

Charles L. Seeley et al. v. Secretary of the Interior, Civil No. 3693-60 & No. 41094, N.D. Cal. Judgment for defendant, July 29, 1964; appeal dismissed, Dec. 16, 1964.

U.S. v. Ollie Mae Shearman et al., 73 I.D. 386 (1966)

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U.S. v. Silverton Mining & Milling Co., IBLA 70-22 (Sept. 23, 1970)

Multiple Use Inc. v. Rogers C. B. Morton, Civil No. 71-211, D. Ariz. Judgment for defendant, 353 F. Supp. 184 (1972); aff'd, 504 F.2d 448 (9th Cir. 1974); no petition.

U.S. v. Thomas R. Shuck, A-27965 (Feb. 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pct., D. Ariz. Judgment for defendant, Dec. 7, 1961; no appeal.

U.S. v. C. F. Snyder et al., 72 I.D. 223 (1965)

Ruth Snyder, Adm'r(x) of the Estate of C. F. Snyder, Deceased et al. v. Stewart L. Udall, Civil No. 66-C-131, D. Colo. Judgment for plaintiff, 267 F. Supp. 110 (1967); rev'd, 405 F.2d 1179 (10th Cir. 1968); cert. denied, 396 U.S. 819 (1969).

U.S. v. Southern Pacific Co., 77 I.D. 41 (1970)

Southern Pacific Co. et al. v. Rogers C. B. Morton et al., Civil No. S-2155, E.D. Cal. Judgment for defendant, Nov. 20, 1974.

U.S. v. Clarence T. & Mary D. Stevens, 77 I.D. 97 (1970)

Clarence T. & Mary D. Stevens v. Walter J. Hickel, Civil No. 1-70-94, D. Idaho. Judgment for defendant, June 4, 1971.

U.S. v. Charles E. Stewart, A-28966 (Sept. 25, 1962)

Charles E. Stewart v. Gordon Penny et al., Civil No. 1619, D. Nev. Judgment for plaintiff, 238 F. Supp. 821 (1965); no appeal.

U.S. v. Cornelius D. Sullivan (a/k/a Corney Sullivan) & Josie L. Sullivan, 5 IBLA 275 (1972)

Cornelius D. & Josie L. Sullivan v. U.S., Ct. Cl. No. 193-69. Dismissed, Oct. 27, 1972.

U.S. v. Elmer H. Swanson, 81 I.D. 14 (1974), 34 IBLA 25 (1978)

Elmer H. Swanson v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 4-74-10, D. Idaho. Dismissed without prejudice, Dec. 23, 1975 (opinion).

Elmer H. Swanson & Livingston Silver, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV-78-4045, D. Idaho. Suit pending.

U.S. v. Tempest Mining Co., 40 IBLA 297 (1979)

Tempest Mining Corp. v. U.S., Dept. of Interior, Bureau of Land Management & Secretary of the Interior, Civil No. CIV 79-1103, D. Idaho. Suit pending.

U.S. v. C. Fred Underwood et al., 22 IBLA 62 (1975), (amended decision) 22 IBLA 70 (1975)

C. Fred Underwood, Chloe Underwood & Jack D. Canon v. The Secretary of the Interior, Civil No. S-76-91 PCW, E.D. Cal. Judgment for defendant, June 23, 1977; aff'd, Mar. 19, 1980.

U.S. v. United States Pumice Co., 37 IBLA 153 (1978); Supplemental Order of Intervention, June 1, 1979, Clarification of Order of June 1, 1979, dated July 18, 1979

The Wilderness Society, McKenzie Fly-fishers, The Obsidians, et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 79-0296. Dismissed, May 30, 1979.

U.S. v. U.S. Silica Corp. et al., A-30400 (Aug. 24, 1965)

Simplot Industries, Inc. v. Udall, Civil No. 1024-S, D. Nev. Judgment for defendant, Sept. 26, 1969; no appeal.

U.S. v. Alfred N. Verrue, 75 I.D. 300 (1968)

Alfred N. Verrue v. U.S. et al., Civil No. 6898 Phx., D. Ariz. Rev'd & remanded, Dec. 29, 1970; aff'd, 457 F.2d 1202 (9th Cir. 1971); no petition.

U.S. v. Kenneth O. Watkins & Harold E. L. Barton, A-29862 (Apr. 24, 1966), A-30659 (Oct. 19, 1967)

Harold E. L. Barton v. Stewart L. Udall, Secretary of the Interior & U.S., Civil No. 69-26, D. Ore. Judgment for defendant, Mar. 17, 1971; aff'd, 498 F.2d 288 (9th Cir. 1974); cert. denied, Nov. 18, 1974.

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U.S. v. Oscar W. Weiss et al., A-30809 (Sept. 14, 1967), 15 IBLA 198 (1974)

Oscar W. Weiss v. Stewart L. Udall, Civil No. C-882, D. Colo. Remanded, Jan. 2, 1969.

U.S. v. Thomas C. Wells, A-30805 (Jan. 8, 1968), A-30805 (Supp.) (Apr. 25, 1969), A-30805 (Supp. II) (Nov. 17, 1969)

Thomas C. Wells v. Udall, Civil No. S-693, E.D. Cal. Remanded to Secretary, Dec. 12, 1968; remanded to Bureau of Land Mgmt. Time extended to Nov. 1, 1970, to comply with requirements of Supp. II. Judgment for defendant, Dec. 17, 1970.

U.S. v. Vernon O. & Ina C. White, 72 I.D. 552 (1965)

Vernon O. & Ina C. White v. Stewart L. Udall, Civil No. 1-65-122, D. Idaho. Judgment for defendant, Jan. 6, 1967; aff'd, 404 F.2d 334 (9th Cir. 1968); no petition.

U.S. v. Milton Wichner, 35 IBLA 240 (1978)

Milton Wichner v. Cecil D. Andrus, Secretary of the Interior, Bob Bergland, Secretary of Agriculture, Frank Gregg, Director, BLM, Edward L. Hastey, State Dir. (California), BLM, William T. Dresser, Forest Supervisor of the Angeles National Forest, & U.S., Civil No. CV 78-2804, C.D. Cal. Suit pending.

U.S. v. Frank W. Winegar et al., 81 I.D. 370 (1974)

Shell Oil Co. & D. A. Shale, Inc. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-F-739, D. Colo. Judgment for plaintiff, Jan. 17, 1977; aff'd, Jan. 25, 1979.

U.S. v. Rodney Wood et al., A-30697 (May 31, 1967)

Rodney Wood et al. v. Stewart L. Udall, Secretary of the Interior & Orville L. Freeman, Secretary of Agriculture, Civil No. S-436, N.D. Cal. Dismissed without prejudice, Nov. 7, 1967; amended complaint filed; judgment for defendant, Mar. 27, 1969; no appeal.

U.S. v. Elodymae Zwang, U.S. v. Darrell Zwang, 26 IBLA 41; 83 I.D. 280 (1976)

Darrell & Elodymae Zwang v. Cecil Andrus, Secretary of the Interior, Civil No. 77-1431 R, D. Cal. Judgment for plaintiff, Aug. 20, 1979.

U.S. v. Merle I. Zweifel et al., 16 IBLA 74 (1974)

Walter H. Burkhardt et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board

of Land Appeals, Civil No. C74-152, D. Wyo. Judgment for defendant, Nov. 7, 1975.

Consolidated with A. F. Anderson et al. v. Rogers C. B. Morton et al., Civil No. C74-151, D. Wyo. for purposes of appeal by order of Nov. 19, 1975. Dismissed, Nov. 28, 1975.

U.S. v. Merle I. Zweifel et al., 80 I.D. 323 (1973)

Merle I. Zweifel et al. v. U.S., Civil No. C-5276, D. Colo. Dismissed without prejudice, Oct. 31, 1973.

Kenneth Roberts et al. v. Rogers C. B. Morton & The Interior Board of Land Appeals, Civil No. C-5308, D. Colo. Dismissed with prejudice, 389 F. Supp. 87 (1975); aff'd, 549 F.2d 158 (10th Cir. 1977).

United Technical Industries, Inc., A-29406 (Apr. 24, 1963)

Jay Nielson v. J. E. Keough et al., Civil No. C-158-63, D. Utah. Dismissed, July 13, 1964 (opinion); no appeal.

Paul Unruh v. Wesley Lawrence Edwards, A-30584 (Sept. 21, 1966)

Paul E. Unruh v. Udall et al., Civil No. 1894-N, D. Nev. Judgment for defendant June 14, 1967; no appeal.

Utah Power & Light Co., 4 IBLA 62 (1971)

Utah Power & Light Co. v. Rogers C. B. Morton et al., Civil No. C-5-72, D. Utah. Dismissed with prejudice, Nov. 3, 1972; aff'd, Sept. 20, 1974.

Utah Power & Light Co., 14 IBLA 372 (1974)

Utah Power & Light Co. v. Thomas S. Kleppe, in his official capacity as Secretary of the Interior, Civil No. C-76-136, D. Utah. Suit pending.

Henrietta Roberts Vaden, IBLA 74-1, dismissed by order, Aug. 8, 1973, Petition for Reconsideration denied by order, May 29, 1975

Henrietta Roberts Vaden, a/k/a Henrietta R. Vaden v. Thomas S. Kleppe, Secretary of the Interior et al., Civil No. A75-223 CIV, D. Alaska. Stipulated dismissal, Mar. 31, 1976.

E. A. Vaughey, 63 I.D. 85 (1956)

E. A. Vaughey v. Fred A. Seaton, Civil No. 1744-56. Dismissed by stipulation, Apr. 18, 1957; no appeal.

Suits for Judicial Review

Estate of Cecelia Smith Vergote (Borger), Morris A. (K.) Charles & Caroline J. Charles (Brendale), 5 IBIA 96; 83 I.D. 209 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Thomas Kleppe, Secretary of the Interior & Phillip Brendale, Civil No. C-76-199, E.D. Wash. Suit pending.

Estate of Florence Bluesky Vessell (Unallotted Lac Courte Oreilles Chippewa of Wisconsin), 1 IBIA 312, 79 I.D. 615 (1972)

Constance Jean Hollen Eskra v. Rogers C. B. Morton et al., Civil No. 72-C-428, D. Wis. Dismissed, 380 F. Supp. 205 (1974); rev'd, Sept. 29, 1975; no petition.

Burt A. Wackerli et al., 73 I.D. 280 (1966)

Burt & Lueva G. Wackerli, et al. v. Stewart L. Udall et al., Civil No. 1-66-92, D. Idaho. Amended complaint filed, Mar. 17, 1971; judgment for plaintiff, Feb. 28, 1975.

Estate of Amelia Keyes Abbot Viramontes Walker, IA-1339 (Apr. 5, 1966)

Earlene Ida Abbott Simons v. Udall et al., Civil No. 2640, D. Mont. Judgment for defendant, 276 F. Supp. 75 (1967); no appeal.

Jack A. Walker, A-30492 (Apr. 28, 1966)

Jack A. Walker v. U.S. & Udall, Civil No. 1-66-80, D. Idaho. Judgment for plaintiff, July 3, 1967; rev'd, 409 F.2d 477 (9th Cir. 1969); no petition.

Estate of Milward Wallace Ward, 82 I.D. 341 (1975)

Alfred Ward, Irene Ward Wise, & Elizabeth Collins v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. C75-175, D. Wyo. Dismissed, Jan. 1, 1976.

Wasatch Development Co. et al., A-28674 (May 16, 1963)

Joseph B. Umpleby et al. v. Stewart L. Udall, Civil No. 8156, D. Colo. Judgment for defendant, 285 F. Supp. 25 (1968); no appeal.

Weardco Construction Corp., 64 I.D. 376 (1957)

Weardco Construction Corp. v. U.S., Civil No. 278-59-PH, S.D. Cal. Judgment for plaintiff, Oct. 26, 1959; satisfaction of judgment entered, Feb. 9, 1960.

Estate of Mary Ursula Rock Wellknown, 1 IBIA 83; 78 I.D. 179 (1971)

William T. Shaw, Jr., et al. v. Rogers C. B. Morton et al., Civil No. 974, D. Mont. Dismissed, July 6, 1973 (opinion); no appeal.

Estate of Wahwersee R. Werqueyah, 5 IBIA 169 (1976)

Mattie Wahwersee v. Thomas Kleppe, Secretary of Interior, Civil No. CIV-76-0845-E, W.D. Okla. Suit pending.

Lucille S. West, Duncan Miller, et al., A-29242 et al. (Feb. 25, 1963), Duncan Miller, A-29231 (Feb. 5, 1963)

Cecil H. Phillips et al. v. Stewart L. Udall, Civil No. 847-63. Dismissed on behalf of all except Lucille S. West; judgment for defendant, Feb. 25, 1964; no appeal.

Western Nuclear, Inc., 35 IBLA 146; 85 I.D. 129 (1978)

Western Nuclear, Inc., a Del. Corp., authorized & doing business in the State of Wyo. v. Cecil Andrus, Secretary of the Interior, & U.S., Civil No. C78-129, D. Wyo. Suit pending.

Minnie F. Wharton, John W. Wharton, Ruth Wharton James, Carroll Wharton, Iris Wharton Bartyl, Marvin Wharton, Thomas Wharton, Betty Wharton Zink, Faye Wharton Pamperien & Samuel Wharton, 4 IBLA 287; 79 I.D. 6 (1972)

U.S. & Rogers C. B. Morton, Secretary of the Interior v. Minnie E. & John W. Wharton, Ruth Wharton James, Carroll Wharton, Iris Wharton Bartyle, Marvin Wharton, Thomas Wharton, Betty Wharton Zink, Faye Wharton Pamperien & Samuel Wharton, Civil No. 70-106, D. Ore. Judgment for defendant, Feb. 26, 1973; reconsideration denied, June 4, 1973; rev'd & remanded, 514 F.2d 406 (9th Cir. 1975); no petition.

Richard Wheeler, Jr., 34 IBLA 359 (1978)

Richard Wheeler, Jr. v. The Dept. of Interior & Cecil Andrus, Secretary of the Interior, Civil No. CIV78-0750 T, W.D. Okla. Suit pending.

Estate of John P. Whitetail, IA-T-23 (Apr. 17, 1970)

Doris Ann Whitetail Parker et al. v. John Pappan et al., Civil No. 70-C-373, D. Okla. Dismissed, July 10, 1973; motion for new trial & reconsideration overruled, Aug. 17, 1973; no appeal.

Estate of Hiemstennie (Maggie) Whiz Abbott, 2 IBIA 53, 80 I.D. 617 (1973); 4 IBIA 12, 82 I.D. 169 (1975); reconsideration denied, 4 IBIA 79 (1975)

Doris Whiz Burkybile v. Alvis Smith, Sr., as Guardian Ad Litem for Zelma, Vernon, Kenneth, Mona & Joseph Smith, Minors, et al., Civil No. C-75-190, E.D. Wash. Judgment for defendant, Jan. 21, 1977; no appeal.

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Buck Willcoxson, A-27402, A-27403 (Dec. 17, 1956)

Buck Willcoxson v. Douglas Henriques, Civil No. 3596, D.N.M. Motion of plaintiff to dismiss case without prejudice granted, Dec. 10, 1957.

Buck Willcoxson v. Stewart L. Udall, Civil No. 2029-58.

U.S. v. Buck Willcoxson et al., Civil No. 1492-59.

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Actions consolidated. Judgment for defendant, plaintiff & defendant, respectively, Aug. 3, 1961; aff'd, 313 F.2d 884 (1963); cert. denied, 373 U.S. 932 (1963).

William A. Smith Contracting Co., IBCA-83 (July 16, 1959)

William A. Smith Contracting Co. et al. v. U.S., Ct. Cl. No. 264-57. Judgment for plaintiff, 292 F.2d 847 (1961); no appeal.

William A. Smith Contracting Co. v. U.S., Ct. Cl. No. 279-59. Judgment for defendant, 292 F.2d 854 (1961); no appeal.

William F. Klingensmith, Inc., IBCA-717-5-68, IBCA-734-10-68 (May 4, 1971)

William F. Klingensmith, Inc. v. U.S., Civil No. 1287-71.

William F. Klingensmith, Inc. v. U.S., Civil No. 1288-71.

Actions consolidated and transferred to Court of Claims, Jan. 24, 1972; Ct. Cl. No. 28-72. Dismissed, Nov. 23, 1973.

David L. Williams, A-29858 (Feb. 12, 1963)

Richard L. & Jean S. Hatter, Gary Linn Dusenberry, Jere D. Anderson, & Henry P. Carley d/b/a Chad Enterprise, a Joint Venture v. U.S., Civil No. S74-205, E.D. Cal. Judgment for defendant, Aug. 8, 1975.

Harry H. Wilson, 35 IBLA 349 (1978)

Harry H. Wilson v. U.S., & Cecil Andrus, Secretary of the Interior, Civil No. A78-225 CIV, D. Alaska. Suit pending.

Estate of Louise Wilson, IA-1380 (Mar. 1, 1966)

Charles W. Heffelman v. Stewart L. Udall, Civil No. 6402, N.D. Okla. Dismissed, June 16, 1966; aff'd, 378 F.2d 109 (10th Cir. 1967); cert. denied, 389 U.S. 926 (1967).

Frank Winegar, Shell Oil Co. & D. A. Shale Inc., 74 I.D. 161 (1967)

Shell Oil Co. et al. v. Udall et al., Civil No. 67-C-321, D. Colo. Judgment for plaintiff, Sept. 18, 1967; no appeal.

Joseph A. Winkler, 24 IBLA 380 (1976)

Joseph A. Winkler v. Thomas Kleppe, Secretary of the Interior, Civil No. C76-176, D. Utah. Judgment for defendant, June 20, 1977; appeal filed, July 5, 1977.

Appeal of Wisenak, Inc., 1 ANCAB 157; 83 I.D. 496 (1976)

Wisenak, Inc., an Alaska Corp. v. Thomas S. Kleppe, Individually & as Secretary of the Interior & the U.S., Civil No. F76-38 Civ., D. Alaska. Remanded to Department for further proceedings, July 9, 1979.

W. L. Ridge Construction Co., IBCA-80 (Nov. 30, 1960)

W. L. Ridge v. U.S., Ct. Cl. No. 301-60. Suit dismissed, Oct. 1, 1963.

Administrative Appeal of Robert B. Wooding et al. v. Commissioner, Bureau of Indian Affairs, 4 IBIA 255 (1975), reconsideration denied, 5 IBIA 9 (1976)

Robert B. Wooding, d/b/a Associated Investors, & Auburn Enterprises, Inc. v. Thomas Kleppe, Secretary of the Interior, et al., Civil No. C76-86T, W.D. Wash. Dismissed for failure to prosecute, June 3, 1977.

Woods Petroleum Corp. et al., William Ralph Stroble et al., 12 IBLA 247 (1973)

Duvels, Inc., West Park International, Inc., George H. Frandsen, Paul P. Dyreng, R. Morgan Dyreng, Stephen B. Nadauld, John B. Peacock & Lori M. Free v. Kent Frizzell, Acting Secretary of the Interior, Civil No. C-75-175, D. Utah. Judgment for defendant, July 6, 1976; appeal filed, Feb. 3, 1976.

Mountain States Resources v. Rogers C. B. Morton, Individually & as Secretary of the Interior, Civil No. C-75-238, D. Utah. Suit pending.

Estate of Wook-Kah-Nah, Comanche Allottee No. 1927, 65 I.D. 436 (1958)

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah, Deceased, Comanche Enrolled Restricted Indian No. 1927 v. Jane Asenap, Wilfred Tabbytite, J. R. Graves, Examiner of Inheritance, Bureau of Indian Affairs, Dept. of the Interior & Earl R. Wiseman, District Dir. of Internal Revenue, Civil No. 8281, W.D. Okla. Dismissed as to the Examiner of Inheritance; plaintiff dismissed suit without prejudice as to the other defendants.

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah v. Stewart L. Udall, Civil No. 2595-60. Judgment for defendant, June 5, 1962; remanded, 312 F.2d 358 (1962).

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State of Wyoming, 27 IBLA 137; 83 I.D. 364 (1976)

State of Wyoming, Albert E. King, Comm'r of Public Lands v. Cecil D. Andrus, Secretary of the Interior, Civil No. C77-034K, D. Wyo. Judgment for defendant, Sept. 8, 1977; aff'd, July 18, 1979.

254 (1972); aff'd, 479 F.2d 58 (8th Cir. 1973); cert. denied, 414 U.S. 858 (1973).

Zeigler Coal Co., 81 I.D. 729 (1974)

International Union of United Mine Workers of America v. Stanley K. Hathaway, Secretary of the Interior, No. 75-1003, United States Court of Appeals, D.C. Cir. Rev'd & remanded to the Board for further proceedings, 532 F.2d 1403 (1976).

Haruyuki Yamane et al., 19 IBLA 320 (1975)

C. Burglin, Dennis Krize, Mark & Kenneth Ringstad, Lloyd Burgess, M. E. Anderson, William Ackess, John J. & William D. Sexton, J. R. & June L. S. Beck, Alexander Miller, Wally Burnett, Sr., Wallace & Donald Burnett, Earnest Carter, Mary L. Carie & Harayuki Yamane v. The Secretary of the Interior, Stanley Hathaway, et al., Civil No. A75-113 CIV. D. Alaska. Consolidated with Civil No. A75-232. Judgment for defendant, Dec. 29, 1976; aff'd, Aug. 18, 1978.

Zeigler Coal Co., 82 I.D. 36 (1975)

Zeigler Coal Co. v. Kent Frizzell, Acting Secretary of the Interior, No. 75-1139, United States Court of Appeals, D.C. Cir. Judgment for defendant, 536 F.2d 398 (1976).

Young Associates, Inc., IBCA-557-4-66 (Dec. 4, 1968)

Young Associates, Inc. v. U.S., Ct. Cl. 787-71. Judgment for defendant, Jan. 18, 1973.

Harry A. Zuckerman, et al., 41 IBLA 372 (1979)

Harry Zuckerman & Mark M. Collins v. Benjamin Civiletti, Attorney General & R. E. Thompson, U.S. Attorney on behalf of Cecil Andrus, Secretary of the Interior, Civil No. CIV-79-815-M, D.N.M. Suit pending.

George W. Zarak et al., Cardinal Petroleum Co., 4 IBLA 82 (1971)

Tony Rice, George W. Zarak, Arlene Zarak, William J. Zarak, Jr. & Darlene Zarak v. Rogers C. B. Morton et al., Civil No. 1127, D.N.D. Judgment for defendant, 348 F. Supp.

Elodymae Zwang et al., A-30201 (Feb. 3, 1965)

Darrell & Elodymae Zwang v. Stewart L. Udall, Civil No. 65-716-EC, S.D. Cal. Judgment for defendant, Feb. 23, 1966; aff'd, 371 F.2d 634 (9th Cir. 1967); no petition.

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 8 IBIA 53 (Mar. 28, 1980)
 51 IBLA 301, 87 I.D. 628 (1980)
 706(2)(A) ----51 IBLA 271 (Dec. 15, 1980)
 706(2)(E) ----51 IBLA 271 (Dec. 15, 1980)
 3105 -----47 IBLA 92 (Apr. 23, 1980)
 51 IBLA 301, 87 I.D. 628 (1980)
 5536 -----4 OHA 54 (Sept. 11, 1980)
 5911 -----4 OHA 54 (Sept. 11, 1980)

TITLE 7:

sec. 901-924 -----46 IBLA 35 (Feb. 20, 1980)
 1363 -----48 IBLA 145 (June 9, 1980)

TITLE 8:

sec. 1401 -----48 IBLA 199 (June 16, 1980)
 48 IBLA 365 (July 11, 1980)
 48 IBLA 373 (July 11, 1980)
 49 IBLA 251 (Aug. 18, 1980)
 51 IBLA 115 (Nov. 20, 1980)

TITLE 11:

sec. 1-1103 -----8 IBIA 170, 87 I.D. 501 (1980)
 24 -----8 IBIA 170, 87 I.D. 501 (1980)
 35 -----8 IBIA 170, 87 I.D. 501 (1980)
 35(c)(3) ----8 IBIA 170, 87 I.D. 501 (1980)
 93(g) -----8 IBIA 170, 87 I.D. 501 (1980)
 93(h) -----8 IBIA 170, 87 I.D. 501 (1980)
 101 -----8 IBIA 170, 87 I.D. 501 (1980)

TITLE 15:

sec. 637(a)----- IBCA 1185-3-78, 87 I.D. 116
 (1980)
 717f(b) -----51 IBLA 47 (Oct. 31, 1980)

TITLE 16:

sec. 273 -----48 IBLA 22 (May 27, 1980)
 431 -----45 IBLA 264, 87 I.D. 34 (1980)
 431-433 -----M-36928, 87 I.D. 593 (1980)
 432 -----45 IBLA 264, 87 I.D. 34 (1980)
 460aa-9 -----50 IBLA 26, 87 I.D. 395 (1980)
 460q-5 -----51 IBLA 301, 87 I.D. 628 (1980)
 461 -----M-36928, 87 I.D. 593 (1980)
 470 et seq. --M-36928, 87 I.D. 593 (1980)
 470a(a) -----M-36928, 87 I.D. 593 (1980)
 470f -----M-36928, 87 I.D. 593 (1980)
 471 -----51 IBLA 115 (Nov. 20, 1980)

TITLE 16 (Continued)

sec. 495 -----45 IBLA 264, 87 I.D. 34 (1980)
 497 -----45 IBLA 264, 87 I.D. 34 (1980)
 523 -----45 IBLA 264, 87 I.D. 34 (1980)
 551 -----4 ANCAB 116, 87 I.D. 1 (1980)
 580d -----45 IBLA 264, 87 I.D. 34 (1980)
 661 -----47 IBLA 71 (Apr. 21, 1980)
 668(b) -----4 OHA 25 (July 1, 1980)
 4 OHA 91 (Oct. 31, 1980)
 668dd -----45 IBLA 4 (Jan. 8, 1980)
 46 IBLA 123, (Feb. 29, 1980)
 46 IBLA 385 (Apr. 10, 1980)
 668dd(c) ----45 IBLA 4 (Jan. 8, 1980)
 45 IBLA 225 (Jan. 31, 1980)
 46 IBLA 123 (Feb. 29, 1980)
 49 IBLA 176 (July 30, 1980)
 668dd(d)(2) --45 IBLA 225 (Jan. 31, 1980)
 49 IBLA 176 (July 30, 1980)
 668-668d ----4 OHA 91 (Oct. 31, 1980)
 791a-823 ----45 IBLA 232 (Feb. 4, 1980)
 818 -----48 IBLA 206 (June 16, 1980)
 1131 -----49 IBLA 169 (July 30, 1980)
 1131 et seq. --45 IBLA 347 (Feb. 7, 1980)
 1131(c) -----45 IBLA 347 (Feb. 7, 1980)
 1131-1136 ----47 IBLA 284 (May 15, 1980)
 1276 -----49 IBLA 162 (July 30, 1980)
 1531-1543 ----4 OHA 42 (Aug. 13, 1980)
 1533(d) -----M-36926, 87 I.D. 525 (1980)
 1538(c)(1) ----4 OHA 42 (Aug. 13, 1980)
 1539(e) -----M-36926, 87 I.D. 525 (1980)
 1901 -----49 IBLA 320 (Aug. 20, 1980)
 1901-1912 ----47 IBLA 92 (Apr. 23, 1980)
 49 IBLA 1 (July 15, 1980)
 51 IBLA 255 (Dec. 15, 1980)
 1903 -----47 IBLA 92 (Apr. 23, 1980)
 1905 -----47 IBLA 92 (Apr. 23, 1980)
 49 IBLA 1 (July 15, 1980)
 49 IBLA 344 (Aug. 25, 1980)
 1907 -----46 IBLA 62 (Feb. 22, 1980)
 49 IBLA 320 (Aug. 20, 1980)
 51 IBLA 191 (Dec. 5, 1980)

TITLE 18:

sec. 43(a)(2) ----4 OHA 42 (Aug. 13, 1980)
 1001 -----46 IBLA 373 (Apr. 8, 1980)
 1301 -----50 IBLA 90 (Sept. 17, 1980)
 1302 -----50 IBLA 90 (Sept. 17, 1980)

TITLE 23:

sec. 18 -----45 IBLA 264, 87 I.D. 34 (1980)
 317 -----45 IBLA 264, 87 I.D. 34 (1980)
 46 IBLA 12 (Feb. 20, 1980)
 50 IBLA 414 (Oct. 24, 1980)

TITLE 25:

sec. 323-324-----8 IBIA 76, 87 I.D. 189 (1980)
 331 -----8 IBIA 30, 87 I.D. 98 (1980)
 331-358 -----8 IBIA 30, 87 I.D. 98 (1980)
 332 -----48 IBLA 199 (June 16, 1980)
 48 IBLA 373 (July 11, 1980)
 334 -----45 IBLA 24 (Jan. 14, 1980)
 46 IBLA 303 (Mar. 31, 1980)
 48 IBLA 199 (June 16, 1980)
 48 IBLA 365 (July 11, 1980)
 48 IBLA 373 (July 11, 1980)
 49 IBLA 251 (Aug. 18, 1980)
 49 IBLA 317 (Aug. 20, 1980)
 49 IBLA 325 (Aug. 22, 1980)
 51 IBLA 115 (Nov. 20, 1980)
 51 IBLA 176 (Nov. 26, 1980)
 51 IBLA 285 (Dec. 15, 1980)

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TITLE 25 (Continued)

sec. 336 -----51 IBLA 285 (Dec. 15, 1980)
 337 -----46 IBLA 303 (Mar. 31, 1980)
 348 -----8 IBIA 30, 87 I.D. 98 (1980)
 8 IBIA 102 (June 20, 1980)
 8 IBIA 115 (July 10, 1980)
 8 IBIA 150 (Aug. 18, 1980)
 349 -----8 IBIA 30, 87 I.D. 98 (1980)
 354 -----8 IBIA 30, 87 I.D. 98 (1980)
 372-373 -----8 IBIA 30, 87 I.D. 98 (1980)
 8 IBIA 130, 87 I.D. 311 (1980)
 372a -----8 IBIA 130, 87 I.D. 311 (1980)
 372a(1)(a) ---8 IBIA 130, 87 I.D. 311 (1980)
 372a(1)(c) ---8 IBIA 130, 87 I.D. 311 (1980)
 373 -----8 IBIA 8, 87 I.D. 64 (1980)
 8 IBIA 30, 87 I.D. 98 (1980)
 8 IBIA 53 (Mar. 28, 1980)
 8 IBIA 117 (July 15, 1980)
 373a -----8 IBIA 30, 87 I.D. 98 (1980)
 373b -----8 IBIA 30, 87 I.D. 98 (1980)
 8 IBIA 205, 87 I.D. 601 (1980)
 393 -----8 IBIA 90, 87 I.D. 201 (1980)
 396 -----47 IBLA 66 (Apr. 18, 1980)
 396a-396f ---47 IBLA 66 (Apr. 18, 1980)
 396b -----47 IBLA 66 (Apr. 18, 1980)
 397 -----8 IBIA 90, 87 I.D. 201 (1980)
 403 -----8 IBIA 90, 87 I.D. 201 (1980)
 410 -----8 IBIA 30, 87 I.D. 98 (1980)
 8 IBIA 106 (July 8, 1980)
 415 -----8 IBIA 76, 87 I.D. 189 (1980)
 461 -----8 IBIA 150 (Aug. 18, 1980)
 8 IBIA 183, 87 I.D. 507 (1980)
 461-479 -----8 IBIA 130, 87 I.D. 311 (1980)
 461-486 -----8 IBIA 183, 87 I.D. 507 (1980)
 462 -----8 IBIA 30, 87 I.D. 98 (1980)
 463 -----45 IBLA 64 (Jan. 17, 1980)
 50 IBLA 95 (Sept. 17, 1980)
 464 -----8 IBIA 164 (Oct. 22, 1980)
 8 IBIA 183, 87 I.D. 507 (1980)
 8 IBIA 201 (Dec. 3, 1980)
 465 -----8 IBIA 183, 87 I.D. 507 (1980)
 466 -----8 IBIA 90, 87 I.D. 201 (1980)
 478 -----8 IBIA 183, 87 I.D. 507 (1980)
 479 -----8 IBIA 183, 87 I.D. 507 (1980)
 483 -----8 IBIA 150 (Aug. 18, 1980)
 8 IBIA 183, 87 I.D. 507 (1980)
 483a -----8 IBIA 30, 87 I.D. 98 (1980)
 8 IBIA 170, 87 I.D. 501 (1980)
 1301-1341 ----8 IBIA 170, 87 I.D. 501 (1980)
 1302 -----8 IBIA 170, 87 I.D. 501 (1980)
 1901-1963 ----8 IBIA 130, 87 I.D. 311 (1980)

TITLE 28:

sec. 1491 -----45 IBLA 64 (Jan. 17, 1980)

TITLE 30:

sec. 20 -----49 IBLA 325 (Aug. 22, 1980)
 51 IBLA 115 (Nov. 20, 1980)
 22 -----45 IBLA 64 (Jan. 17, 1980)
 46 IBLA 1 (Feb. 13, 1980)
 47 IBLA 92 (Apr. 23, 1980)
 49 IBLA 1 (July 15, 1980)
 49 IBLA 360, 87 I.D. 386 (1980)
 50 IBLA 95 (Sept. 17, 1980)
 50 IBLA 110 (Sept. 24, 1980)
 51 IBLA 73 (Oct. 31, 1980)
 51 IBLA 250 (Dec. 15, 1980)
 51 IBLA 255 (Dec. 15, 1980)
 51 IBLA 301, 87 I.D. 628 (1980)
 22 et seq. --48 IBLA 267, 87 I.D. 248 (1980)
 49 IBLA 73 (July 22, 1980)
 49 IBLA 353 (Aug. 29, 1980)
 23 -----46 IBLA 1 (Feb. 13, 1980)
 47 IBLA 92 (Apr. 23, 1980)
 49 IBLA 1 (July 15, 1980)

TITLE 30 (Continued)

sec. 23 (Continued)

49 IBLA 353 (Aug. 29, 1980)
 50 IBLA 95 (Sept. 17, 1980)
 50 IBLA 110 (Sept. 24, 1980)
 50 IBLA 176 (Sept. 30, 1980)
 51 IBLA 199 (Dec. 5, 1980)
 51 IBLA 255 (Dec. 15, 1980)
 51 IBLA 301, 87 I.D. 628 (1980)
 26 -----48 IBLA 267, 87 I.D. 248 (1980)
 28 -----47 IBLA 389 (May 22, 1980)
 48 IBLA 267, 87 I.D. 248 (1980)
 49 IBLA 43 (July 21, 1980)
 49 IBLA 56 (July 21, 1980)
 50 IBLA 394 (Oct. 24, 1980)
 51 IBLA 97, 87 I.D. 535 (1980)
 51 IBLA 301, 87 I.D. 628 (1980)
 28-1 -----45 IBLA 215 (Jan. 30, 1980)
 45 IBLA 389 (Feb. 13, 1980)
 48 IBLA 59 (May 29, 1980)
 28b -----50 IBLA 26, 87 I.D. 395 (1980)
 28c -----50 IBLA 26, 87 I.D. 395 (1980)
 29 -----48 IBLA 267, 87 I.D. 248 (1980)
 35 -----46 IBLA 98 (Feb. 28, 1980)
 47 IBLA 183 (May 7, 1980)
 49 IBLA 317 (Aug. 20, 1980)
 49 IBLA 353 (Aug. 29, 1980)
 51 IBLA 199 (Dec. 5, 1980)
 51 IBLA 255 (Dec. 15, 1980)
 35-36 -----50 IBLA 303 (Oct. 7, 1980)
 36 -----46 IBLA 98 (Feb. 28, 1980)
 47 IBLA 183 (May 7, 1980)
 38 -----45 IBLA 232 (Feb. 4, 1980)
 46 IBLA 221 (Mar. 27, 1980)
 50 IBLA 363 (Oct. 16, 1980)
 50 IBLA 374 (Oct. 21, 1980)
 42 -----45 IBLA 73 (Jan. 17, 1980)
 51 IBLA 73 (Oct. 31, 1980)
 42(a) -----45 IBLA 73 (Jan. 17, 1980)
 54 -----45 IBLA 127 (Jan. 23, 1980)
 81 -----48 IBLA 329 (July 3, 1980)
 83 -----48 IBLA 329 (July 3, 1980)
 121 -----48 IBLA 329 (July 3, 1980)
 124 -----48 IBLA 329 (July 3, 1980)
 161 -----46 IBLA 221 (Mar. 27, 1980)
 181 -----45 IBLA 119 (Jan. 23, 1980)
 45 IBLA 355 (Feb. 7, 1980)
 45 IBLA 398 (Feb. 13, 1980)
 46 IBLA 295 (Mar. 31, 1980)
 46 IBLA 301 (Mar. 31, 1980)
 46 IBLA 389 (Apr. 10, 1980)
 47 IBLA 109 (Apr. 28, 1980)
 48 IBLA 106 (May 30, 1980)
 50 IBLA 154 (Sept. 30, 1980)
 50 IBLA 361 (Oct. 16, 1980)
 51 IBLA 19 (Oct. 28, 1980)
 51 IBLA 97, 87 I.D. 535 (1980)
 181 et seq. --45 IBLA 4 (Jan. 8, 1980)
 45 IBLA 225 (Jan. 31, 1980)
 46 IBLA 123 (Feb. 29, 1980)
 46 IBLA 385 (Apr. 10, 1980)
 48 IBLA 267, 87 I.D. 248 (1980)
 49 IBLA 176 (July 30, 1980)
 M-36921, 87 I.D. 291 (1980)
 M-36927, 87 I.D. 616 (1980)
 M-36929, 87 I.D. 661 (1980)
 181-263 -----49 IBLA 134 (July 28, 1980)
 181-287 -----45 IBLA 159, 87 I.D. 14 (1980)
 45 IBLA 367 (Feb. 7, 1980)
 50 IBLA 252 (Sept. 30, 1980)
 184 -----45 IBLA 16 (Jan. 8, 1980)
 47 IBLA 396 (May 22, 1980)
 48 IBLA 166 (June 9, 1980)
 184(h) -----48 IBLA 166 (June 9, 1980)
 184(h)(1) ----48 IBLA 166 (June 9, 1980)

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sec. 184(h)(2) -----46 IBLA 156 (Mar. 19, 1980)
 47 IBLA 39 (Apr. 11, 1980)
 48 IBLA 166 (June 9, 1980)
 48 IBLA 190 (June 9, 1980)
 48 IBLA 333 (July 3, 1980)
 49 IBLA 19 (July 15, 1980)
 50 IBLA 347 (Oct. 14, 1980)
 184(i) -----47 IBLA 39 (Apr. 11, 1980)
 185 -----M-36921, 87 I.D. 291 (1980)
 185(a) -----M-36921, 87 I.D. 291 (1980)
 185(d) -----M-36921, 87 I.D. 291 (1980)
 185(r)(4) ----M-36921, 87 I.D. 291 (1980)
 186 -----M-36921, 87 I.D. 291 (1980)
 187 -----M-36921, 87 I.D. 291 (1980)
 188 -----45 IBLA 146 (Jan. 23, 1980)
 45 IBLA 305 (Feb. 6, 1980)
 48 IBLA 258 (June 26, 1980)
 50 IBLA 249 (Sept. 30, 1980)
 51 IBLA 271 (Dec. 15, 1980)
 188(a) -----48 IBLA 166 (June 9, 1980)
 188(b) -----45 IBLA 60 (Jan. 14, 1980)
 45 IBLA 146 (Jan. 23, 1980)
 45 IBLA 393 (Feb. 13, 1980)
 46 IBLA 33 (Feb. 20, 1980)
 46 IBLA 87 (Feb. 28, 1980)
 46 IBLA 116 (Feb. 29, 1980)
 46 IBLA 217 (Mar. 27, 1980)
 46 IBLA 254 (Mar. 27, 1980)
 46 IBLA 295 (Mar. 31, 1980)
 46 IBLA 312 (Apr. 4, 1980)
 47 IBLA 53 (Apr. 14, 1980)
 48 IBLA 7 (May 27, 1980)
 48 IBLA 166 (June 9, 1980)
 48 IBLA 197 (June 9, 1980)
 48 IBLA 258 (June 26, 1980)
 49 IBLA 14 (July 15, 1980)
 49 IBLA 106 (July 28, 1980)
 49 IBLA 153 (July 30, 1980)
 49 IBLA 234 (Aug. 12, 1980)
 50 IBLA 50 (Sept. 15, 1980)
 50 IBLA 259 (Sept. 30, 1980)
 51 IBLA 53 (Oct. 31, 1980)
 51 IBLA 125 (Nov. 20, 1980)
 51 IBLA 217 (Dec. 10, 1980)
 51 IBLA 356 (Dec. 29, 1980)
 188(c) -----45 IBLA 146 (Jan. 23, 1980)
 46 IBLA 33 (Feb. 20, 1980)
 46 IBLA 87 (Feb. 28, 1980)
 46 IBLA 116 (Feb. 29, 1980)
 46 IBLA 217 (Mar. 27, 1980)
 46 IBLA 254 (Mar. 27, 1980)
 46 IBLA 295 (Mar. 31, 1980)
 46 IBLA 312 (Apr. 4, 1980)
 47 IBLA 53 (Apr. 14, 1980)
 47 IBLA 83 (Apr. 21, 1980)
 47 IBLA 180 (May 7, 1980)
 48 IBLA 7 (May 27, 1980)
 48 IBLA 197 (June 9, 1980)
 48 IBLA 258 (June 26, 1980)
 49 IBLA 14 (July 15, 1980)
 49 IBLA 106 (July 28, 1980)
 49 IBLA 153 (July 30, 1980)
 49 IBLA 234 (Aug. 12, 1980)
 50 IBLA 50 (Sept. 15, 1980)
 50 IBLA 249 (Sept. 30, 1980)
 50 IBLA 256 (Sept. 30, 1980)
 50 IBLA 259 (Sept. 30, 1980)
 51 IBLA 53 (Oct. 31, 1980)
 51 IBLA 125 (Nov. 20, 1980)
 51 IBLA 217 (Dec. 10, 1980)
 51 IBLA 271 (Dec. 15, 1980)
 51 IBLA 356 (Dec. 29, 1980)
 188(d) -----47 IBLA 53 (Apr. 14, 1980)
 189 -----45 IBLA 16 (Jan. 8, 1980)
 45 IBLA 335 (Feb. 6, 1980)
 47 IBLA 177 (May 7, 1980)
 M-36921, 87 I.D. 291 (1980)

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sec. 191 -----M-36929, 87 I.D. 661 (1980)
 193 -----48 IBLA 267, 87 I.D. 248 (1980)
 51 IBLA 97, 87 I.D. 535 (1980)
 201(a) -----47 IBLA 193 (May 7, 1980)
 201(b) -----45 IBLA 159, 87 I.D. 14 (1980)
 47 IBLA 193 (May 7, 1980)
 207 -----8 IBLA 90, 87 I.D. 201 (1980)
 50 IBLA 252 (Sept. 30, 1980)
 219(a) -----47 IBLA 121 (Apr. 28, 1980)
 223 -----50 IBLA 249 (Sept. 30, 1980)
 226 -----45 IBLA 16 (Jan. 8, 1980)
 45 IBLA 225 (Jan. 31, 1980)
 47 IBLA 1 (Apr. 10, 1980)
 48 IBLA 64 (May 29, 1980)
 48 IBLA 166 (June 9, 1980)
 49 IBLA 176 (July 30, 1980)
 50 IBLA 38 (Sept. 9, 1980)
 51 IBLA 19 (Oct. 28, 1980)
 51 IBLA 149 (Nov. 26, 1980)
 M-36921, 87 I.D. 291 (1980)
 226(a) -----45 IBLA 4 (Jan. 8, 1980)
 45 IBLA 225 (Jan. 31, 1980)
 46 IBLA 123 (Feb. 29, 1980)
 46 IBLA 385 (Apr. 10, 1980)
 49 IBLA 134 (July 28, 1980)
 49 IBLA 176 (July 30, 1980)
 226(b) -----45 IBLA 16 (Jan. 8, 1980)
 45 IBLA 84 (Jan. 17, 1980)
 45 IBLA 99 (Jan. 17, 1980)
 46 IBLA 53 (Feb. 20, 1980)
 46 IBLA 389 (Apr. 10, 1980)
 48 IBLA 64 (May 29, 1980)
 48 IBLA 246 (June 17, 1980)
 49 IBLA 33 (July 21, 1980)
 50 IBLA 361 (Oct. 16, 1980)
 51 IBLA 66 (Oct. 31, 1980)
 51 IBLA 149 (Nov. 26, 1980)
 51 IBLA 181 (Dec. 2, 1980)
 51 IBLA 217 (Dec. 10, 1980)
 226(c) -----45 IBLA 208 (Jan. 30, 1980)
 47 IBLA 396 (May 22, 1980)
 48 IBLA 338 (July 3, 1980)
 50 IBLA 173 (Sept. 30, 1980)
 226(d) -----47 IBLA 53 (Apr. 14, 1980)
 49 IBLA 106 (July 28, 1980)
 51 IBLA 125 (Nov. 20, 1980)
 226(e) -----45 IBLA 183 (Jan. 30, 1980)
 46 IBLA 285 (Mar. 27, 1980)
 46 IBLA 295 (Mar. 31, 1980)
 47 IBLA 125 (Apr. 29, 1980)
 50 IBLA 9 (Sept. 5, 1980)
 226(f) -----45 IBLA 105 (Jan. 17, 1980)
 47 IBLA 125 (Apr. 29, 1980)
 50 IBLA 9 (Sept. 5, 1980)
 50 IBLA 150 (Sept. 26, 1980)
 51 IBLA 239 (Dec. 15, 1980)
 226(j) -----45 IBLA 183 (Jan. 30, 1980)
 46 IBLA 295 (Mar. 31, 1980)
 47 IBLA 53 (Apr. 14, 1980)
 47 IBLA 125 (Apr. 29, 1980)
 49 IBLA 230 (Aug. 12, 1980)
 50 IBLA 9 (Sept. 5, 1980)
 M-36921, 87 I.D. 291 (1980)
 M-36927, 87 I.D. 616 (1980)
 229a -----50 IBLA 154 (Sept. 30, 1980)
 261 -----45 IBLA 367 (Feb. 7, 1980)
 262 -----45 IBLA 367 (Feb. 7, 1980)
 48 IBLA 106 (May 30, 1980)
 281 -----45 IBLA 335 (Feb. 6, 1980)
 281-287 -----48 IBLA 329 (July 3, 1980)
 301-306 -----50 IBLA 173 (Sept. 30, 1980)
 351-359 -----45 IBLA 40 (Jan. 14, 1980)
 46 IBLA 27 (Feb. 20, 1980)
 46 IBLA 331 (Apr. 4, 1980)
 352 -----45 IBLA 40 (Jan. 14, 1980)
 45 IBLA 398 (Feb. 13, 1980)
 46 IBLA 27 (Feb. 20, 1980)

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sec. 352 (Continued)

46 IBLA 290 (Mar. 31, 1980)
 46 IBLA 331 (Apr. 4, 1980)
 46 IBLA 389 (Apr. 10, 1980)
 354 -----49 IBLA 153 (July 30, 1980)
 521-531 -----45 IBLA 367 (Feb. 7, 1980)
 524-541 -----45 IBLA 367 (Feb. 7, 1980)
 601 -----45 IBLA 127 (Jan. 23, 1980)
 46 IBLA 12 (Feb. 20, 1980)
 601-603 -----45 IBLA 127 (Jan. 23, 1980)
 601-604 -----4 ANCAB 173, 87 I.D. 123 (1980)
 601-615 -----47 IBLA 183 (May 7, 1980)
 611 -----45 IBLA 127 (Jan. 23, 1980)
 46 IBLA 221 (Mar. 27, 1980)
 47 IBLA 183 (May 7, 1980)
 49 IBLA 73 (July 22, 1980)
 49 IBLA 360, 87 I.D. 386 (1980)
 51 IBLA 250 (Dec. 15, 1980)
 621 -----45 IBLA 14 (Jan. 8, 1980)
 45 IBLA 232 (Feb. 4, 1980)
 51 IBLA 30 (Oct. 30, 1980)
 51 IBLA 283 (Dec. 15, 1980)
 621(a) -----48 IBLA 206 (June 16, 1980)
 621-625 -----45 IBLA 232 (Feb. 4, 1980)
 48 IBLA 206 (June 16, 1980)
 623 -----46 IBLA 62 (Feb. 22, 1980)
 701-709 -----46 IBLA 335 (Apr. 4, 1980)
 51 IBLA 291 (Dec. 17, 1980)
 982-984 -----51 IBLA 3 (Oct. 28, 1980)
 987 -----51 IBLA 3 (Oct. 28, 1980)
 1001 -----48 IBLA 400 (July 11, 1980)
 50 IBLA 4 (Sept. 5, 1980)
 1001(e) -----47 IBLA 1 (Apr. 10, 1980)
 50 IBLA 4 (Sept. 5, 1980)
 1001-1025 -----45 IBLA 127 (Jan. 23, 1980)
 1003 -----47 IBLA 1 (Apr. 10, 1980)
 50 IBLA 4 (Sept. 5, 1980)
 1201 -----2 IBSMA 45, 87 I.D. 138 (1980)
 1201(c) -----2 IBSMA 359, 87 I.D. 579 (1980)
 1201(e) -----2 IBSMA 359, 87 I.D. 579 (1980)
 1201(f) -----2 IBSMA 359, 87 I.D. 579 (1980)
 1201(j) -----2 IBSMA 359, 87 I.D. 579 (1980)
 1201-1328 -----49 IBLA 307 (Aug. 20, 1980)
 2 IBSMA 9, 87 I.D. 11 (1980)
 2 IBSMA 34, 87 I.D. 114 (1980)
 2 IBSMA 38, 87 I.D. 119 (1980)
 2 IBSMA 56 (Apr. 23, 1980)
 2 IBSMA 63, 87 I.D. 176 (1980)
 2 IBSMA 70, 87 I.D. 172 (1980)
 2 IBSMA 90, 87 I.D. 186 (1980)
 2 IBSMA 110, 87 I.D. 207 (1980)
 2 IBSMA 118, 87 I.D. 245 (1980)
 2 IBSMA 158, 87 I.D. 324 (1980)
 2 IBSMA 165, 87 I.D. 327 (1980)
 2 IBSMA 173, 87 I.D. 331 (1980)
 2 IBSMA 180, 87 I.D. 333 (1980)
 2 IBSMA 189, 87 I.D. 347 (1980)
 2 IBSMA 209, 87 I.D. 377 (1980)
 2 IBSMA 215, 87 I.D. 380 (1980)
 2 IBSMA 222, 87 I.D. 383 (1980)
 2 IBSMA 238, 87 I.D. 414 (1980)
 2 IBSMA 249, 87 I.D. 416 (1980)
 2 IBSMA 261, 87 I.D. 430 (1980)
 2 IBSMA 270, 87 I.D. 434 (1980)
 2 IBSMA 277, 87 I.D. 437 (1980)
 2 IBSMA 298, 87 I.D. 446 (1980)
 2 IBSMA 316, 87 I.D. 521 (1980)
 2 IBSMA 325, 87 I.D. 554 (1980)
 2 IBSMA 332, 87 I.D. 557 (1980)
 2 IBSMA 359, 87 I.D. 579 (1980)
 2 IBSMA 372, 87 I.D. 584 (1980)
 2 IBSMA 399, 87 I.D. 645 (1980)
 1202 -----2 IBSMA 45, 87 I.D. 138 (1980)
 1202(a) -----2 IBSMA 359, 87 I.D. 579 (1980)
 1202(m) -----2 IBSMA 359, 87 I.D. 579 (1980)

TITLE 30 (Continued)

sec. 1251 -----2 IBSMA 70, 87 I.D. 172 (1980)
 1252 -----2 IBSMA 189, 87 I.D. 347 (1980)
 1252(a) -----2 IBSMA 38, 87 I.D. 119 (1980)
 2 IBSMA 308, 87 I.D. 494 (1980)
 2 IBSMA 359, 87 I.D. 579 (1980)
 1252(b) -----2 IBSMA 70, 87 I.D. 172 (1980)
 2 IBSMA 284, 87 I.D. 439 (1980)
 2 IBSMA 341, 87 I.D. 570 (1980)
 1252(c) -----2 IBSMA 45, 87 I.D. 138 (1980)
 2 IBSMA 70, 87 I.D. 172 (1980)
 2 IBSMA 284, 87 I.D. 439 (1980)
 2 IBSMA 308, 87 I.D. 494 (1980)
 1252(e) -----2 IBSMA 70, 87 I.D. 172 (1980)
 1255 -----2 IBSMA 110, 87 I.D. 207 (1980)
 1255(b) -----2 IBSMA 180, 87 I.D. 333 (1980)
 2 IBSMA 341, 87 I.D. 570 (1980)
 1265(b)(3) -----2 IBSMA 341, 87 I.D. 570 (1980)
 1265(d)(2) -----2 IBSMA 341, 87 I.D. 570 (1980)
 1265(e) -----2 IBSMA 341, 87 I.D. 570 (1980)
 1265(e)(1) -----2 IBSMA 341, 87 I.D. 570 (1980)
 1267(b)(3) -----2 IBSMA 261, 87 I.D. 430 (1980)
 1268 -----2 IBSMA 17 (Feb. 15, 1980)
 2 IBSMA 147, 87 I.D. 319 (1980)
 2 IBSMA 406, 87 I.D. 669 (1980)
 1268(c) -----2 IBSMA 17 (Feb. 15, 1980)
 2 IBSMA 32 (Mar. 13, 1980)
 2 IBSMA 147, 87 I.D. 319 (1980)
 2 IBSMA 233 (Sept. 10, 1980)
 2 IBSMA 247 (Sept. 23, 1980)
 2 IBSMA 248 (Sept. 23, 1980)
 1268(h) -----2 IBSMA 316, 87 I.D. 521 (1980)
 1271 -----2 IBSMA 395, 87 I.D. 643 (1980)
 1271(a) -----2 IBSMA 70, 87 I.D. 172 (1980)
 2 IBSMA 372, 87 I.D. 584 (1980)
 1271(a)(1) -----2 IBSMA 118, 87 I.D. 245 (1980)
 2 IBSMA 158, 87 I.D. 324 (1980)
 2 IBSMA 261, 87 I.D. 430 (1980)
 1271(a)(2) -----2 IBSMA 81, 87 I.D. 168 (1980)
 1271(a)(3) -----2 IBSMA 9, 87 I.D. 11 (1980)
 2 IBSMA 25, 87 I.D. 61 (1980)
 2 IBSMA 45, 87 I.D. 138 (1980)
 2 IBSMA 81, 87 I.D. 168 (1980)
 2 IBSMA 96, 87 I.D. 196 (1980)
 2 IBSMA 118, 87 I.D. 245 (1980)
 2 IBSMA 158, 87 I.D. 324 (1980)
 2 IBSMA 238, 87 I.D. 414 (1980)
 2 IBSMA 249, 87 I.D. 416 (1980)
 2 IBSMA 308, 87 I.D. 494 (1980)
 2 IBSMA 372, 87 I.D. 584 (1980)
 2 IBSMA 382, 87 I.D. 589 (1980)
 2 IBSMA 406, 87 I.D. 669 (1980)
 1271(a)(5) -----2 IBSMA 38, 87 I.D. 119 (1980)
 2 IBSMA 125, 87 I.D. 304 (1980)
 2 IBSMA 372, 87 I.D. 584 (1980)
 1271(c) -----2 IBSMA 70, 87 I.D. 172 (1980)
 1272(e)(4) -----2 IBSMA 270, 87 I.D. 434 (1980)
 2 IBSMA 308, 87 I.D. 494 (1980)
 1272(e)(5) -----2 IBSMA 382, 87 I.D. 589 (1980)
 1275 -----2 IBSMA 406, 87 I.D. 669 (1980)
 1275(a)(1) -----2 IBSMA 147, 87 I.D. 319 (1980)
 1275(b) -----2 IBSMA 341, 87 I.D. 570 (1980)
 1275(c) -----2 IBSMA 63, 87 I.D. 176 (1980)
 1275(e) -----2 IBSMA 370 (Nov. 25, 1980)
 1278(2) -----2 IBSMA 118, 87 I.D. 245 (1980)
 2 IBSMA 359, 87 I.D. 579 (1980)
 1291(2) -----2 IBSMA 341, 87 I.D. 570 (1980)
 1291(28) -----2 IBSMA 284, 87 I.D. 439 (1980)
 1291(28)(B) -----2 IBSMA 284, 87 I.D. 439 (1980)
 1294 -----2 IBSMA 70, 87 I.D. 172 (1980)

TITLE 31:

sec. 203 -----IBCA-1382-8-80 (Dec. 10, 1980)
 483a -----45 IBLA 119 (Jan. 23, 1980)
 46 IBLA 35 (Feb. 20, 1980)
 50 IBLA 190, 87 I.D. 473 (1980)

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TITLE 33:

sec. 1311 ----- 2 IBSMA 249, 87 I.D. 416 (1980)

TITLE 40:

sec. 471 et seq. -- 4 ANCAR 173, 87 I.D. 123 (1980)
4 ANCAR 207 (Apr. 21, 1980)

TITLE 41:

sec. 15 ----- IBCA-1382-8-80 (Dec. 10, 1980)
321 -----45 IBLA 64 (Jan. 17, 1980)
601-613 ----- IBCA-1224-11-78, 87 I.D.
180 (1980)
IBCA-1197-6-78, 1204-8-78,
87 I.D. 450 (1980)

TITLE 42:

sec. 4321 et seq. -- M-36928, 87 I.D. 593 (1980)
4321-4335 -----45 IBLA 159, 87 I.D. 14 (1980)
45 IBLA 171, 87 I.D. 21 (1980)
4321-4347 -----46 IBLA 35 (Feb. 20, 1980)
51 IBLA 154 (Nov. 26, 1980)
4331 -----45 IBLA 252 (Feb. 4, 1980)
4331(b) ----- M-36928, 87 I.D. 593 (1980)
4332 -----45 IBLA 252 (Feb. 4, 1980)
51 IBLA 154 (Nov. 26, 1980)
4332(C) -----45 IBLA 347 (Feb. 7, 1980)
51 IBLA 154 (Nov. 26, 1980)
4601 et seq. -- 4 OHA 82 (Sept. 18, 1980)
4601(6) ----- 4 OHA 11 (May 12, 1980)
4 OHA 86 (Oct. 31, 1980)
4601(7) ----- 4 OHA 86 (Oct. 31, 1980)
4601(8) ----- 4 OHA 86 (Oct. 31, 1980)
4601-4655 ----- 4 OHA 86 (Oct. 31, 1980)
4603 ----- 4 OHA 11 (May 12, 1980)
4622 ----- 4 OHA 1 (Apr. 23, 1980)
4 OHA 20 (June 23, 1980)
4 OHA 36 (Aug. 6, 1980)
4 OHA 53 (Aug. 19, 1980)
4 OHA 86 (Oct. 31, 1980)
4622(a) ----- 3 OHA 179 (Mar. 13, 1980)
4 OHA 36 (Aug. 6, 1980)
4622(a)(1) ----- 3 OHA 173 (Jan. 31, 1980)
4622(c) ----- 3 OHA 191 (Mar. 24, 1980)
4 OHA 36 (Aug. 6, 1980)
4623 ----- 3 OHA 168 (Jan. 30, 1980)
3 OHA 179 (Mar. 13, 1980)
4 OHA 11 (May 12, 1980)
4 OHA 20 (June 23, 1980)
4 OHA 24 (June 24, 1980)
4 OHA 39 (Aug. 12, 1980)
4623(a)(1) ----- 4 OHA 33 (July 30, 1980)
4623(a)(1)(A) - 3 OHA 168 (Jan. 30, 1980)
4 OHA 15 (June 11, 1980)
4623(a)(2) ----- 4 OHA 33 (July 30, 1980)
4624 ----- 4 OHA 11 (May 12, 1980)
4 OHA 30 (July 2, 1980)
4 OHA 33 (July 30, 1980)
4625 ----- 4 OHA 11 (May 12, 1980)
4626 ----- 4 OHA 11 (May 12, 1980)
4633 ----- 3 OHA 173 (Jan. 31, 1980)
4651(5) ----- 3 OHA 179 (Mar. 13, 1980)

TITLE 43:

sec. 141 ----- 4 ANCAR 173, 87 I.D. 123 (1980)
45 IBLA 51 (Jan. 14, 1980)
45 IBLA 264, 87 I.D. 34 (1980)
141-143 -----51 IBLA 115 (Nov. 20, 1980)
142 -----45 IBLA 51 (Jan. 14, 1980)
154 -----47 IBLA 121 (Apr. 28, 1980)
158 -----47 IBLA 223 (May 13, 1980)
49 IBLA 87 (July 22, 1980)
161 -----48 IBLA 329 (July 3, 1980)
161 et seq. --46 IBLA 165 (Mar. 21, 1980)
164 -----46 IBLA 165 (Mar. 21, 1980)

TITLE 43 (Continued)

sec. 182 -----48 IBLA 263 (June 30, 1980)
51 IBLA 132 (Nov. 20, 1980)
185 -----48 IBLA 51 (May 29, 1980)
48 IBLA 76 (May 29, 1980)
189 -----48 IBLA 199 (June 16, 1980)
48 IBLA 365 (July 11, 1980)
48 IBLA 373 (July 11, 1980)
190 -----48 IBLA 199 (June 16, 1980)
48 IBLA 365 (July 11, 1980)
48 IBLA 373 (July 11, 1980)
201 -----48 IBLA 329 (July 3, 1980)
270-1 -----45 IBLA 28 (Jan. 14, 1980)
50 IBLA 61 (Sept. 15, 1980)
50 IBLA 353 (Oct. 16, 1980)
51 IBLA 165 (Nov. 26, 1980)
270-1--270-3 -45 IBLA 28 (Jan. 14, 1980)
45 IBLA 43 (Jan. 14, 1980)
46 IBLA 56 (Feb. 22, 1980)
46 IBLA 165 (Mar. 21, 1980)
46 IBLA 177 (Mar. 21, 1980)
46 IBLA 303 (Mar. 31, 1980)
46 IBLA 326 (Apr. 4, 1980)
46 IBLA 373 (Apr. 8, 1980)
47 IBLA 58 (Apr. 14, 1980)
47 IBLA 241 (May 13, 1980)
47 IBLA 249 (May 13, 1980)
48 IBLA 229 (June 17, 1980)
48 IBLA 377 (July 11, 1980)
49 IBLA 213 (Aug. 11, 1980)
51 IBLA 165 (Nov. 26, 1980)
270-3 -----51 IBLA 165 (Nov. 26, 1980)
291 -----45 IBLA 127 (Jan. 23, 1980)
48 IBLA 329 (July 3, 1980)
291-298 -----45 IBLA 127 (Jan. 23, 1980)
291-300 -----45 IBLA 127 (Jan. 23, 1980)
291-301 -----45 IBLA 127 (Jan. 23, 1980)
299 -----45 IBLA 127 (Jan. 23, 1980)
48 IBLA 329 (July 3, 1980)
300 -----46 IBLA 101 (Feb. 29, 1980)
50 IBLA 154 (Sept. 30, 1980)
315 -----45 IBLA 127 (Jan. 23, 1980)
47 IBLA 71 (Apr. 21, 1980)
48 IBLA 365 (July 11, 1980)
48 IBLA 373 (July 11, 1980)
49 IBLA 251 (Aug. 18, 1980)
50 IBLA 235 (Sept. 30, 1980)
51 IBLA 115 (Nov. 20, 1980)
315 et seq. --45 IBLA 127 (Jan. 23, 1980)
48 IBLA 329 (July 3, 1980)
315-315f -----48 IBLA 385 (July 11, 1980)
315-315n -----51 IBLA 115 (Nov. 20, 1980)
315a -----48 IBLA 385 (July 11, 1980)
315a-315r -----50 IBLA 235 (Sept. 30, 1980)
315f -----51 IBLA 115 (Nov. 20, 1980)
315h-315m -----48 IBLA 385 (July 11, 1980)
315m -----50 IBLA 284 (Oct. 6, 1980)
315n -----48 IBLA 385 (July 11, 1980)
316 -----47 IBLA 363 (May 21, 1980)
316m -----47 IBLA 363 (May 21, 1980)
321 -----46 IBLA 140 (Mar. 19, 1980)
48 IBLA 263 (June 30, 1980)
325 -----46 IBLA 140 (Mar. 19, 1980)
329 -----48 IBLA 51 (May 29, 1980)
48 IBLA 76 (May 29, 1980)
334 -----51 IBLA 132 (Nov. 20, 1980)
371 -----47 IBLA 12 (Apr. 10, 1980)
416 -----47 IBLA 12 (Apr. 10, 1980)
51 IBLA 285 (Dec. 15, 1980)
424a -----46 IBLA 140 (Mar. 19, 1980)
641 -----48 IBLA 250 (June 26, 1980)
49 IBLA 221 (Aug. 12, 1980)
643 -----48 IBLA 250 (June 26, 1980)
49 IBLA 221 (Aug. 12, 1980)
682a -----45 IBLA 28 (Jan. 14, 1980)
46 IBLA 265 (Mar. 27, 1980)
48 IBLA 159 (June 9, 1980)

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TITLE 43 (Continued)

sec. 687a ----- 46 IBLA 239 (Mar. 27, 1980)
 50 IBLA 69 (Sept. 17, 1980)
 50 IBLA 290 (Oct. 7, 1980)
 687a-1 -----46 IBLA 239 (Mar. 27, 1980)
 50 IBLA 69 (Sept. 17, 1980)
 697 -----47 IBLA 17, 87 I.D. 143 (1980)
 719 -----51 IBLA 368 (Dec. 30, 1980)
 720 -----51 IBLA 368 (Dec. 30, 1980)
 732 -----45 IBLA 87 (Jan. 17, 1980)
 51 IBLA 368 (Dec. 30, 1980)
 732-736 -----46 IBLA 257 (Mar. 27, 1980)
 733-736 -----45 IBLA 87 (Jan. 17, 1980)
 46 IBLA 132 (Mar. 19, 1980)
 46 IBLA 198 (Mar. 24, 1980)
 48 IBLA 123 (May 30, 1980)
 48 IBLA 377 (July 11, 1980)
 51 IBLA 368 (Dec. 30, 1980)
 772 -----47 IBLA 315 (May 19, 1980)
 851 -----50 IBLA 367 (Oct. 21, 1980)
 852 -----50 IBLA 367 (Oct. 21, 1980)
 852(a) -----50 IBLA 367 (Oct. 21, 1980)
 852(a)(1) -----50 IBLA 367 (Oct. 21, 1980)
 852(d)(1) -----50 IBLA 367 (Oct. 21, 1980)
 869 -----46 IBLA 177 (Mar. 21, 1980)
 46 IBLA 213 (Mar. 27, 1980)
 49 IBLA 256 (Aug. 18, 1980)
 869(c) -----49 IBLA 256 (Aug. 18, 1980)
 869-1 -----51 IBLA 212 (Dec. 10, 1980)
 869--869-4 ---46 IBLA 213 (Mar. 27, 1980)
 870 -----50 IBLA 382 (Oct. 22, 1980)
 870(c) -----50 IBLA 382 (Oct. 22, 1980)
 871a -----50 IBLA 382 (Oct. 22, 1980)
 912 -----48 IBLA 118 (May 30, 1980)
 945 -----51 IBLA 212 (Dec. 10, 1980)
 946 -----47 IBLA 155 (May 6, 1980)
 946-949 -----47 IBLA 155 (May 6, 1980)
 951 -----47 IBLA 155 (May 6, 1980)
 961 -----48 IBLA 233 (June 17, 1980)
 49 IBLA 23 (July 15, 1980)
 959 -----47 IBLA 71 (Apr. 21, 1980)
 51 IBLA 390 (Dec. 31, 1980)
 982-984 -----51 IBLA 3 (Oct. 28, 1980)
 987 -----51 IBLA 3 (Oct. 28, 1980)
 1013 -----49 IBLA 278, 87 I.D. 350 (1980)
 1068 -----4 ANCAB 151, 87 I.D. 81 (1980)
 1068 et seq. --47 IBLA 373 (May 21, 1980)
 1068-1068a ---47 IBLA 373 (May 21, 1980)
 1068-1068b ---4 ANCAB 151, 87 I.D. 81 (1980)
 1166 -----45 IBLA 318 (Feb. 6, 1980)
 46 IBLA 326 (Apr. 4, 1980)
 51 IBLA 212 (Dec. 10, 1980)
 1171 -----49 IBLA 278, 87 I.D. 350 (1980)
 49 IBLA 325 (Aug. 22, 1980)
 51 IBLA 115 (Nov. 20, 1980)
 1181a -----45 IBLA 252 (Feb. 4, 1980)
 45 IBLA 347 (Feb. 7, 1980)
 1181a-1181j ---45 IBLA 252 (Feb. 4, 1980)
 45 IBLA 347 (Feb. 7, 1980)
 1185 -----46 IBLA 12 (Feb. 20, 1980)
 1201 -----45 IBLA 127 (Jan. 23, 1980)
 1301 et seq. -- M-36927, 87 I.D. 616 (1980)
 1331 -----45 IBLA 313 (Feb. 6, 1980)
 1331 et seq. -- M-36923, 87 I.D. 544 (1980)
 M-36927, 87 I.D. 616 (1980)
 M-36928, 87 I.D. 593 (1980)
 1331-1356 -----50 IBLA 303, 87 I.D. 478 (1980)
 1332(a) -----50 IBLA 303, 87 I.D. 478 (1980)
 1332(b) ----- M-36923, 87 I.D. 544 (1980)
 1334 -----51 IBLA 332, 87 I.D. 648 (1980)
 M-36923, 87 I.D. 544 (1980)
 1334(a) ----- M-36923, 87 I.D. 544 (1980)
 M-36924, 87 I.D. 563 (1980)
 M-36927, 87 I.D. 616 (1980)
 1334(a)(1) ---46 IBLA 392 (Apr. 10, 1980)
 M-36923, 87 I.D. 544 (1980)
 M-36927, 87 I.D. 616 (1980)

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sec. 1334(a)(4) ---- M-36923, 87 I.D. 544 (1980)
 M-36927, 87 I.D. 616 (1980)
 1334(a)(8) ---- M-36923, 87 I.D. 544 (1980)
 1334(a)(7) ---- M-36923, 87 I.D. 544 (1980)
 M-36927, 87 I.D. 616 (1980)
 1334(b) ----- M-36927, 87 I.D. 616 (1980)
 1334(c) ----- M-36927, 87 I.D. 616 (1980)
 1334(d) ----- M-36927, 87 I.D. 616 (1980)
 1334(g) ----- M-36923, 87 I.D. 544 (1980)
 1337 -----49 IBLA 337 (Aug. 25, 1980)
 51 IBLA 332, 87 I.D. 648 (1980)
 1337(a)(2) ---- M-36927, 87 I.D. 616 (1980)
 1337(b)(2) ---- M-36927, 87 I.D. 616 (1980)
 1337(b)(2)(A) - M-36927, 87 I.D. 616 (1980)
 1337(b)(2)(B) - M-36927, 87 I.D. 616 (1980)
 1337(b)(4) ---- M-36923, 87 I.D. 544 (1980)
 1337(b)(5) ---- M-36923, 87 I.D. 544 (1980)
 1337(d) ----- M-36927, 87 I.D. 616 (1980)
 1340 ----- M-36922, 87 I.D. 517 (1980)
 M-36927, 87 I.D. 616 (1980)
 1340(a)(1) ---- M-36922, 87 I.D. 517 (1980)
 1340(c)(1) ---- M-36927, 87 I.D. 616 (1980)
 1344(g) ----- M-36924, 87 I.D. 563 (1980)
 1345 ----- M-36923, 87 I.D. 544 (1980)
 1347(b) ----- M-36923, 87 I.D. 544 (1980)
 1351 ----- M-36923, 87 I.D. 544 (1980)
 M-36927, 87 I.D. 616 (1980)
 1351(a)(1) ---- M-36923, 87 I.D. 544 (1980)
 1351(b) ----- M-36923, 87 I.D. 544 (1980)
 1351(c) ----- M-36923, 87 I.D. 544 (1980)
 1351(d) ----- M-36923, 87 I.D. 544 (1980)
 1351(e)(1) ---- M-36923, 87 I.D. 544 (1980)
 1351(g) ----- M-36923, 87 I.D. 544 (1980)
 1351(h) ----- M-36923, 87 I.D. 544 (1980)
 1351(l) ----- M-36923, 87 I.D. 544 (1980)
 1352(a)(1) ---- M-36924, 87 I.D. 563 (1980)
 1352(a)(1)(C) - M-36924, 87 I.D. 563 (1980)
 1371 -----45 IBLA 119 (Jan. 23, 1980)
 46 IBLA 35 (Feb. 20, 1980)
 50 IBLA 190, 87 I.D. 473 (1980)
 1374 -----46 IBLA 35 (Feb. 20, 1980)
 50 IBLA 190, 87 I.D. 473 (1980)
 1411-1413 -----51 IBLA 115 (Nov. 20, 1980)
 1411-1418 -----45 IBLA 14 (Jan. 8, 1980)
 49 IBLA 325 (Aug. 22, 1980)
 1421-1427 -----49 IBLA 325 (Aug. 22, 1980)
 51 IBLA 115 (Nov. 20, 1980)
 1431-1435 -----49 IBLA 278, 87 I.D. 350 (1980)
 1451-1457 -----51 IBLA 301, 87 I.D. 628 (1980)
 1601 -----4 ANCAB 173, 87 I.D. 123 (1980)
 4 ANCAB 314 (July 9, 1980)
 4 ANCAB 350 (July 30, 1980)
 5 ANCAB 77, 87 I.D. 480 (1980)
 5 ANCAB 123, 87 I.D. 603 (1980)
 45 IBLA 198 (Jan. 30, 1980)
 46 IBLA 366 (Apr. 8, 1980)
 50 IBLA 280 (Oct. 6, 1980)
 50 IBLA 353 (Oct. 16, 1980)
 1601 et seq. -- 8 IBLA 210 (Nov. 7, 1980)
 1601-1627 -----4 ANCAB 173, 87 I.D. 123 (1980)
 1601-1628 -----4 ANCAB 112 (Jan. 9, 1980)
 4 ANCAB 116, 87 I.D. 1 (1980)
 4 ANCAB 130 (Jan. 21, 1980)
 4 ANCAB 132 (Jan. 31, 1980)
 4 ANCAB 134 (Feb. 8, 1980)
 4 ANCAB 151, 87 I.D. 81 (1980)
 4 ANCAB 168 (Feb. 28, 1980)
 4 ANCAB 171 (Feb. 29, 1980)
 4 ANCAB 173, 87 I.D. 123 (1980)
 4 ANCAB 207 (Apr. 21, 1980)
 4 ANCAB 215 (Apr. 23, 1980)
 4 ANCAB 217, 87 I.D. 163 (1980)
 4 ANCAB 222, 87 I.D. 164 (1980)
 4 ANCAB 232 (May 7, 1980)
 4 ANCAB 234 (May 9, 1980)
 4 ANCAB 236 (May 12, 1980)

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sec. 1601-1628 (Continued)

4 ANCAB 238 (May 20, 1980)
 4 ANCAB 244 (May 28, 1980)
 4 ANCAB 247 (June 2, 1980)
 4 ANCAB 250, 87 I.D. 219 (1980)
 4 ANCAB 277, 87 I.D. 279 (1980)
 4 ANCAB 294, 87 I.D. 286 (1980)
 4 ANCAB 307 (July 8, 1980)
 4 ANCAB 314 (July 9, 1980)
 4 ANCAB 318 (July 15, 1980)
 4 ANCAB 321 (July 24, 1980)
 4 ANCAB 328 (July 24, 1980)
 4 ANCAB 335 (July 24, 1980)
 4 ANCAB 342 (July 24, 1980)
 4 ANCAB 350 (July 30, 1980)
 4 ANCAB 355, 87 I.D. 341 (1980)
 5 ANCAB 1 (Aug. 20, 1980)
 5 ANCAB 4, 87 I.D. 366 (1980)
 5 ANCAB 19, 87 I.D. 372 (1980)
 5 ANCAB 32 (Aug. 25, 1980)
 5 ANCAB 39 (Aug. 26, 1980)
 5 ANCAB 46 (Aug. 26, 1980)
 5 ANCAB 54 (Sept. 10, 1980)
 5 ANCAB 57 (Sept. 22, 1980)
 5 ANCAB 77, 87 I.D. 480 (1980)
 5 ANCAB 123, 87 I.D. 603 (1980)
 5 ANCAB 139 (Dec. 18, 1980)
 1601-1630 -----45 IBLA 87 (Jan. 17, 1980)
 1602(e) -----5 ANCAB 59, 87 I.D. 422 (1980)
 1610(b)(1) -----51 IBLA 368 (Dec. 30, 1980)
 1611 -----4 ANCAB 314 (July 9, 1980)
 1611(a) -----4 ANCAB 350 (July 30, 1980)
 5 ANCAB 123, 87 I.D. 603 (1980)
 1611(a)(1) -----50 IBLA 284 (Oct. 6, 1980)
 1611(c) -----5 ANCAB 77, 87 I.D. 480 (1980)
 1617 -----45 IBLA 28 (Jan. 14, 1980)
 45 IBLA 198 (Jan. 30, 1980)
 46 IBLA 56 (Feb. 22, 1980)
 46 IBLA 165 (Mar. 21, 1980)
 46 IBLA 177 (Mar. 21, 1980)
 46 IBLA 303 (Mar. 31, 1980)
 46 IBLA 366 (Apr. 8, 1980)
 46 IBLA 373 (Apr. 8, 1980)
 47 IBLA 58 (Apr. 14, 1980)
 47 IBLA 241 (May 13, 1980)
 47 IBLA 249 (May 13, 1980)
 48 IBLA 229 (June 17, 1980)
 48 IBLA 377 (July 11, 1980)
 49 IBLA 213 (Aug. 11, 1980)
 50 IBLA 61 (Sept. 15, 1980)
 51 IBLA 165 (Nov. 26, 1980)
 1617(a) -----45 IBLA 43 (Jan. 14, 1980)
 47 IBLA 58 (Apr. 14, 1980)
 1624 -----5 ANCAB 59, 87 I.D. 422 (1980)
 1700-1728 -----50 IBLA 186, 87 I.D. 462 (1980)
 1701 -----45 IBLA 87 (Jan. 17, 1980)
 45 IBLA 305 (Feb. 6, 1980)
 46 IBLA 257 (Mar. 27, 1980)
 47 IBLA 47 (Apr. 14, 1980)
 47 IBLA 284 (May 15, 1980)
 48 IBLA 250 (June 26, 1980)
 49 IBLA 278, 87 I.D. 350 (1980)
 50 IBLA 127 (Sept. 24, 1980)
 1701 et seq. --47 IBLA 17, 87 I.D. 143 (1980)
 1701(a)(5) ----47 IBLA 47 (Apr. 14, 1980)
 47 IBLA 155 (May 6, 1980)
 50 IBLA 80 (Sept. 17, 1980)
 50 IBLA 127 (Sept. 24, 1980)
 51 IBLA 89 (Nov. 5, 1980)
 1701(a)(8) ----47 IBLA 71 (Apr. 21, 1980)
 47 IBLA 155 (May 6, 1980)
 50 IBLA 80 (Sept. 17, 1980)
 1701(a)(9) ----48 IBLA 159 (June 9, 1980)
 1701(a)(12) ---47 IBLA 155 (May 6, 1980)
 50 IBLA 80 (Sept. 17, 1980)

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sec. 1701-1781 -----45 IBLA 171, 87 I.D. 21 (1980)
 1701-1782 -----45 IBLA 347 (Feb. 7, 1980)
 46 IBLA 80 (Feb. 22, 1980)
 46 IBLA 132 (Mar. 19, 1980)
 46 IBLA 198 (Mar. 24, 1980)
 47 IBLA 155 (May 6, 1980)
 51 IBLA 154 (Nov. 26, 1980)
 1702(a) -----47 IBLA 155 (May 6, 1980)
 1702(d) -----47 IBLA 155 (May 6, 1980)
 1702(e) -----50 IBLA 303, 87 I.D. 478 (1980)
 1713 -----48 IBLA 385 (July 11, 1980)
 1714 -----48 IBLA 250 (June 26, 1980)
 50 IBLA 186, 87 I.D. 462 (1980)
 1714(a) -----50 IBLA 186, 87 I.D. 462 (1980)
 1714(b) -----50 IBLA 186, 87 I.D. 462 (1980)
 1714(b)(1) ----50 IBLA 186, 87 I.D. 462 (1980)
 51 IBLA 178 (Dec. 2, 1980)
 1714(g) -----51 IBLA 178 (Dec. 2, 1980)
 1714(i) -----45 IBLA 171, 87 I.D. 21 (1980)
 1719(b) -----50 IBLA 197 (Sept. 30, 1980)
 1719(b)(1) ----50 IBLA 197 (Sept. 30, 1980)
 1722 -----49 IBLA 278, 87 I.D. 350 (1980)
 1732 -----46 IBLA 265 (Mar. 27, 1980)
 48 IBLA 159 (June 9, 1980)
 1732(b) -----45 IBLA 87 (Jan. 17, 1980)
 45 IBLA 219 (Jan. 31, 1980)
 46 IBLA 132 (Mar. 19, 1980)
 46 IBLA 198 (Mar. 24, 1980)
 46 IBLA 257 (Mar. 27, 1980)
 46 IBLA 350 (Apr. 8, 1980)
 48 IBLA 123 (May 30, 1980)
 48 IBLA 377 (July 11, 1980)
 1733(a) -----47 IBLA 47 (Apr. 14, 1980)
 50 IBLA 127 (Sept. 24, 1980)
 1734 -----45 IBLA 305 (Feb. 6, 1980)
 50 IBLA 190, 87 I.D. 473 (1980)
 1734(c) -----50 IBLA 190, 87 I.D. 473 (1980)
 1735 -----50 IBLA 190, 87 I.D. 473 (1980)
 1740 -----47 IBLA 47 (Apr. 14, 1980)
 47 IBLA 71 (Apr. 21, 1980)
 48 IBLA 233 (June 17, 1980)
 49 IBLA 23 (July 15, 1980)
 50 IBLA 127 (Sept. 24, 1980)
 51 IBLA 178 (Dec. 2, 1980)
 1744 -----45 IBLA 215 (Jan. 30, 1980)
 45 IBLA 305 (Feb. 6, 1980)
 46 IBLA 62 (Feb. 22, 1980)
 46 IBLA 93 (Feb. 28, 1980)
 46 IBLA 208 (Mar. 24, 1980)
 46 IBLA 229 (Mar. 27, 1980)
 46 IBLA 287 (Mar. 31, 1980)
 46 IBLA 298 (Mar. 31, 1980)
 46 IBLA 309 (Apr. 4, 1980)
 46 IBLA 316 (Apr. 4, 1980)
 46 IBLA 319 (Apr. 4, 1980)
 46 IBLA 355 (Apr. 8, 1980)
 46 IBLA 360 (Apr. 8, 1980)
 46 IBLA 363 (Apr. 8, 1980)
 47 IBLA 43 (Apr. 11, 1980)
 47 IBLA 47 (Apr. 14, 1980)
 47 IBLA 89 (Apr. 21, 1980)
 47 IBLA 112 (Apr. 28, 1980)
 47 IBLA 118 (Apr. 28, 1980)
 47 IBLA 129 (Apr. 29, 1980)
 47 IBLA 132 (Apr. 29, 1980)
 47 IBLA 135 (Apr. 30, 1980)
 47 IBLA 143 (May 6, 1980)
 47 IBLA 146 (May 6, 1980)
 47 IBLA 149 (May 6, 1980)
 47 IBLA 152 (May 6, 1980)
 47 IBLA 172 (May 7, 1980)
 47 IBLA 196 (May 7, 1980)
 47 IBLA 200 (May 7, 1980)
 47 IBLA 204 (May 7, 1980)
 47 IBLA 208 (May 13, 1980)
 47 IBLA 213 (May 13, 1980)
 47 IBLA 217 (May 13, 1980)

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sec. 1744 (Continued)

47 IBLA 220 (May 13, 1980)
 47 IBLA 229 (May 13, 1980)
 47 IBLA 232 (May 13, 1980)
 47 IBLA 235 (May 13, 1980)
 47 IBLA 238 (May 13, 1980)
 47 IBLA 252 (May 13, 1980)
 47 IBLA 262 (May 13, 1980)
 47 IBLA 272 (May 13, 1980)
 47 IBLA 286 (May 15, 1980)
 47 IBLA 289 (May 15, 1980)
 47 IBLA 293 (May 15, 1980)
 47 IBLA 296 (May 19, 1980)
 47 IBLA 298 (May 19, 1980)
 47 IBLA 301 (May 19, 1980)
 47 IBLA 306 (May 19, 1980)
 47 IBLA 309 (May 19, 1980)
 47 IBLA 312 (May 19, 1980)
 47 IBLA 332 (May 21, 1980)
 47 IBLA 348 (May 21, 1980)
 47 IBLA 351 (May 21, 1980)
 47 IBLA 357 (May 21, 1980)
 47 IBLA 360 (May 21, 1980)
 47 IBLA 370 (May 21, 1980)
 47 IBLA 393 (May 22, 1980)
 48 IBLA 16 (May 27, 1980)
 48 IBLA 39 (May 29, 1980)
 48 IBLA 43 (May 29, 1980)
 48 IBLA 55 (May 29, 1980)
 48 IBLA 59 (May 29, 1980)
 48 IBLA 71 (May 29, 1980)
 48 IBLA 79 (May 29, 1980)
 48 IBLA 83 (May 29, 1980)
 48 IBLA 87 (May 29, 1980)
 48 IBLA 90 (May 29, 1980)
 48 IBLA 96 (May 29, 1980)
 48 IBLA 99 (May 29, 1980)
 48 IBLA 103 (May 29, 1980)
 48 IBLA 127 (May 30, 1980)
 48 IBLA 129 (May 30, 1980)
 48 IBLA 132 (May 30, 1980)
 48 IBLA 134 (May 30, 1980)
 48 IBLA 141 (May 30, 1980)
 48 IBLA 175 (June 9, 1980)
 48 IBLA 178 (June 9, 1980)
 48 IBLA 180 (June 9, 1980)
 48 IBLA 184 (June 9, 1980)
 48 IBLA 193 (June 9, 1980)
 48 IBLA 214 (June 16, 1980)
 48 IBLA 218 (June 16, 1980)
 48 IBLA 253 (June 26, 1980)
 48 IBLA 255 (June 26, 1980)
 48 IBLA 267, 87 I.D. 248 (1980)
 48 IBLA 346 (July 3, 1980)
 48 IBLA 351 (July 11, 1980)
 49 IBLA 11 (July 15, 1980)
 49 IBLA 40 (July 21, 1980)
 49 IBLA 56 (July 21, 1980)
 49 IBLA 94 (July 22, 1980)
 49 IBLA 111 (July 28, 1980)
 49 IBLA 114 (July 28, 1980)
 49 IBLA 128 (July 28, 1980)
 49 IBLA 137 (July 28, 1980)
 49 IBLA 150 (July 30, 1980)
 49 IBLA 157 (July 30, 1980)
 49 IBLA 166 (July 30, 1980)
 49 IBLA 173 (July 30, 1980)
 49 IBLA 180 (July 31, 1980)
 49 IBLA 184 (July 31, 1980)
 49 IBLA 187 (Aug. 6, 1980)
 49 IBLA 190 (Aug. 6, 1980)
 49 IBLA 193 (Aug. 6, 1980)
 49 IBLA 197 (Aug. 6, 1980)
 49 IBLA 217 (Aug. 11, 1980)
 49 IBLA 225 (Aug. 12, 1980)

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49 IBLA 228 (Aug. 12, 1980)
 49 IBLA 243 (Aug. 18, 1980)
 49 IBLA 267 (Aug. 18, 1980)
 49 IBLA 320 (Aug. 20, 1980)
 49 IBLA 329 (Aug. 25, 1980)
 49 IBLA 332 (Aug. 25, 1980)
 49 IBLA 335 (Aug. 25, 1980)
 49 IBLA 378 (Sept. 5, 1980)
 50 IBLA 1 (Sept. 5, 1980)
 50 IBLA 26, 87 I.D. 395 (1980)
 50 IBLA 42 (Sept. 9, 1980)
 50 IBLA 47 (Sept. 9, 1980)
 50 IBLA 58 (Sept. 15, 1980)
 50 IBLA 66 (Sept. 17, 1980)
 50 IBLA 84 (Sept. 17, 1980)
 50 IBLA 121 (Sept. 24, 1980)
 50 IBLA 124 (Sept. 24, 1980)
 50 IBLA 127 (Sept. 24, 1980)
 50 IBLA 131 (Sept. 24, 1980)
 50 IBLA 138 (Sept. 26, 1980)
 50 IBLA 141 (Sept. 26, 1980)
 50 IBLA 145 (Sept. 26, 1980)
 50 IBLA 164 (Sept. 30, 1980)
 50 IBLA 201 (Sept. 30, 1980)
 50 IBLA 206 (Sept. 30, 1980)
 50 IBLA 212 (Sept. 30, 1980)
 50 IBLA 225 (Sept. 30, 1980)
 50 IBLA 227 (Sept. 30, 1980)
 50 IBLA 303, 87 I.D. 478 (1980)
 50 IBLA 363 (Oct. 16, 1980)
 50 IBLA 374 (Oct. 21, 1980)
 50 IBLA 379 (Oct. 22, 1980)
 51 IBLA 17 (Oct. 28, 1980)
 51 IBLA 32 (Oct. 30, 1980)
 51 IBLA 43 (Oct. 30, 1980)
 51 IBLA 45 (Oct. 30, 1980)
 51 IBLA 56 (Oct. 31, 1980)
 51 IBLA 185 (Dec. 2, 1980)
 51 IBLA 188 (Dec. 2, 1980)
 51 IBLA 212 (Dec. 10, 1980)
 51 IBLA 224 (Dec. 10, 1980)
 51 IBLA 250 (Dec. 15, 1980)
 51 IBLA 265 (Dec. 15, 1980)
 51 IBLA 287 (Dec. 17, 1980)
 51 IBLA 294 (Dec. 17, 1980)
 51 IBLA 297 (Dec. 17, 1980)
 51 IBLA 361 (Dec. 29, 1980)
 51 IBLA 364 (Dec. 29, 1980)
 1744(a) ----- 45 IBLA 389 (Feb. 13, 1980)
 46 IBLA 62 (Feb. 22, 1980)
 46 IBLA 319 (Apr. 4, 1980)
 47 IBLA 200 (May 7, 1980)
 47 IBLA 386 (May 21, 1980)
 47 IBLA 389 (May 22, 1980)
 48 IBLA 48 (May 29, 1980)
 48 IBLA 129 (May 30, 1980)
 48 IBLA 184 (June 9, 1980)
 48 IBLA 211 (June 16, 1980)
 49 IBLA 166 (July 30, 1980)
 50 IBLA 164 (Sept. 30, 1980)
 50 IBLA 406 (Oct. 24, 1980)
 51 IBLA 185 (Dec. 2, 1980)
 51 IBLA 194 (Dec. 5, 1980)
 1744(a)(1) ----- 46 IBLA 62 (Feb. 22, 1980)
 46 IBLA 93 (Feb. 28, 1980)
 46 IBLA 360 (Apr. 8, 1980)
 47 IBLA 135 (Apr. 30, 1980)
 48 IBLA 71 (May 29, 1980)
 49 IBLA 43 (July 21, 1980)
 50 IBLA 145 (Sept. 26, 1980)
 50 IBLA 164 (Sept. 30, 1980)
 50 IBLA 371 (Oct. 21, 1980)
 50 IBLA 394 (Oct. 24, 1980)
 51 IBLA 173 (Nov. 26, 1980)

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 46 IBLA 62 (Feb. 22, 1980)
 46 IBLA 93 (Feb. 28, 1980)
 46 IBLA 360 (Apr. 8, 1980)
 47 IBLA 135 (Apr. 30, 1980)
 47 IBLA 175 (May 7, 1980)
 47 IBLA 386 (May 21, 1980)
 49 IBLA 43 (July 21, 1980)
 49 IBLA 150 (July 30, 1980)
 50 IBLA 145 (Sept. 26, 1980)
 50 IBLA 164 (Sept. 30, 1980)
 50 IBLA 371 (Oct. 21, 1980)
 50 IBLA 394 (Oct. 24, 1980)
 51 IBLA 173 (Nov. 26, 1980)
 1744(b) -----46 IBLA 62 (Feb. 22, 1980)
 46 IBLA 74 (Feb. 22, 1980)
 46 IBLA 127 (Feb. 29, 1980)
 46 IBLA 355 (Apr. 8, 1980)
 47 IBLA 129 (Apr. 29, 1980)
 47 IBLA 132 (Apr. 29, 1980)
 47 IBLA 146 (May 6, 1980)
 47 IBLA 152 (May 6, 1980)
 47 IBLA 172 (May 7, 1980)
 47 IBLA 196 (May 7, 1980)
 47 IBLA 204 (May 7, 1980)
 47 IBLA 217 (May 13, 1980)
 47 IBLA 220 (May 13, 1980)
 47 IBLA 229 (May 13, 1980)
 47 IBLA 286 (May 15, 1980)
 47 IBLA 289 (May 15, 1980)
 47 IBLA 293 (May 15, 1980)
 47 IBLA 309 (May 19, 1980)
 47 IBLA 332 (May 21, 1980)
 47 IBLA 345 (May 21, 1980)
 47 IBLA 348 (May 21, 1980)
 47 IBLA 360 (May 21, 1980)
 47 IBLA 393 (May 22, 1980)
 48 IBLA 1 (May 27, 1980)
 48 IBLA 16 (May 27, 1980)
 48 IBLA 48 (May 29, 1980)
 48 IBLA 55 (May 29, 1980)
 48 IBLA 71 (May 29, 1980)
 48 IBLA 87 (May 29, 1980)
 48 IBLA 93 (May 29, 1980)
 48 IBLA 175 (June 9, 1980)
 48 IBLA 180 (June 9, 1980)
 48 IBLA 193 (June 9, 1980)
 48 IBLA 203 (June 16, 1980)
 48 IBLA 214 (June 16, 1980)
 48 IBLA 222 (June 16, 1980)
 49 IBLA 43 (July 21, 1980)
 49 IBLA 111 (July 28, 1980)
 49 IBLA 114 (July 28, 1980)
 49 IBLA 125 (July 28, 1980)
 49 IBLA 128 (July 28, 1980)
 49 IBLA 146 (July 30, 1980)
 49 IBLA 157 (July 30, 1980)
 49 IBLA 173 (July 30, 1980)
 49 IBLA 180 (July 30, 1980)
 49 IBLA 217 (Aug. 11, 1980)
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 50 IBLA 58 (Sept. 15, 1980)
 50 IBLA 84 (Sept. 17, 1980)
 50 IBLA 107 (Sept. 17, 1980)
 50 IBLA 121 (Sept. 24, 1980)
 50 IBLA 124 (Sept. 24, 1980)
 50 IBLA 141 (Sept. 26, 1980)
 50 IBLA 147 (Sept. 26, 1980)
 50 IBLA 363 (Oct. 16, 1980)
 50 IBLA 371 (Oct. 21, 1980)
 50 IBLA 374 (Oct. 21, 1980)
 50 IBLA 379 (Oct. 22, 1980)
 50 IBLA 394 (Oct. 24, 1980)
 51 IBLA 32 (Oct. 30, 1980)
 51 IBLA 56 (Oct. 31, 1980)
 51 IBLA 188 (Dec. 2, 1980)

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51 IBLA 250 (Dec. 15, 1980)
 51 IBLA 265 (Dec. 15, 1980)
 51 IBLA 287 (Dec. 17, 1980)
 51 IBLA 330 (Dec. 29, 1980)
 51 IBLA 364 (Dec. 29, 1980)
 1744(c) -----46 IBLA 62 (Feb. 22, 1980)
 46 IBLA 74 (Feb. 22, 1980)
 46 IBLA 93 (Feb. 28, 1980)
 46 IBLA 127 (Feb. 29, 1980)
 46 IBLA 287 (Mar. 31, 1980)
 46 IBLA 319 (Apr. 4, 1980)
 46 IBLA 360 (Apr. 8, 1980)
 47 IBLA 43 (Apr. 11, 1980)
 47 IBLA 47 (Apr. 14, 1980)
 47 IBLA 89 (Apr. 21, 1980)
 47 IBLA 129 (Apr. 29, 1980)
 47 IBLA 132 (Apr. 29, 1980)
 47 IBLA 135 (Apr. 30, 1980)
 47 IBLA 146 (May 6, 1980)
 47 IBLA 152 (May 6, 1980)
 47 IBLA 172 (May 7, 1980)
 47 IBLA 196 (May 7, 1980)
 47 IBLA 200 (May 7, 1980)
 47 IBLA 204 (May 7, 1980)
 47 IBLA 208 (May 13, 1980)
 47 IBLA 217 (May 13, 1980)
 47 IBLA 220 (May 13, 1980)
 47 IBLA 229 (May 13, 1980)
 47 IBLA 235 (May 13, 1980)
 47 IBLA 281 (May 15, 1980)
 47 IBLA 286 (May 15, 1980)
 47 IBLA 289 (May 15, 1980)
 47 IBLA 293 (May 15, 1980)
 47 IBLA 301 (May 19, 1980)
 47 IBLA 306 (May 19, 1980)
 47 IBLA 332 (May 21, 1980)
 47 IBLA 345 (May 21, 1980)
 47 IBLA 348 (May 21, 1980)
 47 IBLA 360 (May 21, 1980)
 47 IBLA 386 (May 21, 1980)
 47 IBLA 389 (May 22, 1980)
 47 IBLA 393 (May 22, 1980)
 48 IBLA 1 (May 27, 1980)
 48 IBLA 16 (May 27, 1980)
 48 IBLA 43 (May 29, 1980)
 48 IBLA 48 (May 29, 1980)
 48 IBLA 55 (May 29, 1980)
 48 IBLA 71 (May 29, 1980)
 48 IBLA 175 (June 9, 1980)
 48 IBLA 178 (June 9, 1980)
 48 IBLA 180 (June 9, 1980)
 48 IBLA 203 (June 16, 1980)
 48 IBLA 211 (June 16, 1980)
 48 IBLA 222 (June 16, 1980)
 48 IBLA 225 (June 16, 1980)
 48 IBLA 253 (June 26, 1980)
 48 IBLA 255 (June 26, 1980)
 49 IBLA 11 (July 15, 1980)
 49 IBLA 43 (July 21, 1980)
 49 IBLA 94 (July 22, 1980)
 49 IBLA 111 (July 28, 1980)
 49 IBLA 114 (July 28, 1980)
 49 IBLA 125 (July 28, 1980)
 49 IBLA 146 (July 30, 1980)
 49 IBLA 150 (July 30, 1980)
 49 IBLA 157 (July 30, 1980)
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 50 IBLA 121 (Sept. 24, 1980)
 50 IBLA 124 (Sept. 24, 1980)
 50 IBLA 138 (Sept. 26, 1980)
 50 IBLA 141 (Sept. 26, 1980)
 50 IBLA 145 (Sept. 26, 1980)
 50 IBLA 147 (Sept. 26, 1980)
 50 IBLA 201 (Sept. 30, 1980)
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 50 IBLA 277 (Oct. 6, 1980)
 50 IBLA 371 (Oct. 21, 1980)
 50 IBLA 394 (Oct. 24, 1980)
 50 IBLA 406 (Oct. 24, 1980)
 51 IBLA 17 (Oct. 28, 1980)
 51 IBLA 56 (Oct. 31, 1980)
 51 IBLA 173 (Nov. 26, 1980)
 51 IBLA 194 (Dec. 5, 1980)
 51 IBLA 250 (Dec. 15, 1980)
 51 IBLA 265 (Dec. 15, 1980)
 51 IBLA 287 (Dec. 17, 1980)
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 51 IBLA 368 (Dec. 30, 1980)
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 51 IBLA 154 (Nov. 26, 1980)
 1761(a) ----- M-36921, 87 I.D. 291 (1980)
 1761(a)(1) -----47 IBLA 71 (Apr. 21, 1980)
 1761-1771 -----50 IBLA 190, 87 I.D. 473 (1980)
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 1764(g) -----48 IBLA 233 (June 17, 1980)
 49 IBLA 23 (July 15, 1980)
 1765 -----51 IBLA 154 (Nov. 26, 1980)
 1765(b)(vi) ---47 IBLA 155 (May 6, 1980)
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 1767(a) -----51 IBLA 26 (Oct. 28, 1980)
 1770 -----48 IBLA 233 (June 17, 1980)
 51 IBLA 26 (Oct. 28, 1980)
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 1802(1) ----- M-36923, 87 I.D. 544 (1980)
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 46 IBLA 93 (Feb. 28, 1980)
 46 IBLA 312 (Apr. 4, 1980)
 47 IBLA 196 (May 7, 1980)
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48 IBLA 175 (June 9, 1980)
 48 IBLA 180 (June 9, 1980)
 48 IBLA 222 (June 16, 1980)
 48 IBLA 255 (June 26, 1980)
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 48 IBLA 398 (July 11, 1980)
 49 IBLA 11 (July 15, 1980)
 49 IBLA 40 (July 21, 1980)
 49 IBLA 106 (July 28, 1980)
 49 IBLA 111 (July 28, 1980)
 49 IBLA 137 (July 28, 1980)
 49 IBLA 150 (July 30, 1980)
 49 IBLA 157 (July 30, 1980)
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 49 IBLA 193 (Aug. 6, 1980)
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 49 IBLA 200 (Aug. 11, 1980)
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 49 IBLA 335 (Aug. 25, 1980)
 50 IBLA 1 (Sept. 5, 1980)
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 50 IBLA 50 (Sept. 15, 1980)
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 47 IBLA 204 (May 7, 1980)
 47 IBLA 235 (May 13, 1980)
 47 IBLA 289 (May 15, 1980)
 47 IBLA 389 (May 22, 1980)
 48 IBLA 99 (May 29, 1980)
 48 IBLA 127 (May 30, 1980)
 48 IBLA 175 (June 9, 1980)
 48 IBLA 180 (June 9, 1980)
 48 IBLA 222 (June 16, 1980)
 48 IBLA 255 (June 26, 1980)
 48 IBLA 351 (July 11, 1980)
 48 IBLA 398 (July 11, 1980)
 49 IBLA 11 (July 15, 1980)
 49 IBLA 40 (July 21, 1980)
 49 IBLA 106 (July 28, 1980)
 49 IBLA 111 (July 28, 1980)
 49 IBLA 137 (July 28, 1980)
 49 IBLA 150 (July 30, 1980)
 49 IBLA 157 (July 30, 1980)
 49 IBLA 184 (July 31, 1980)
 49 IBLA 193 (Aug. 6, 1980)
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 49 IBLA 228 (Aug. 12, 1980)
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 49 IBLA 271 (Aug. 18, 1980)
 49 IBLA 335 (Aug. 25, 1980)
 50 IBLA 1 (Sept. 5, 1980)
 50 IBLA 47 (Sept. 9, 1980)
 50 IBLA 50 (Sept. 15, 1980)
 50 IBLA 127 (Sept. 24, 1980)
 50 IBLA 201 (Sept. 30, 1980)
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 47 IBLA 85 (Apr. 21, 1980)
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 741 -----51 IBLA 212 (Dec. 10, 1980)
 1026 -----50 IBLA 382 (Oct. 22, 1980)
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ACCOUNTS

(See also Fees, Funds, Payments--if included in this Index.) ACCOUNTS--Continued

GENERALLY

A Geological Survey Area Supervisor is acting within the authority granted to him by applicable provisions of Indian oil and gas leases and Indian and Federal royalty regulations when he decides to adopt the greater of either 1) actual sales prices of production from the leased lands or 2) a substitute price computed by him which is reasonably based on sales prices from all production from other similar tribal leases in the area, as the "value" of gas produced on these leases, and when he directs lessees to compute royalty based on the greater of the two values so calculated.

Where the Area Supervisor assembles data concerning sales from all Jicarilla tribal leases for a particular year and determines the median sales price, his use of this figure as a minimum floor price by which to determine value will be affirmed, as this decision is within the latitude afforded him, and this price is reasonably based on transactions indicative of the actual value of the production in the area at that time.

A lessee's obligation to pay royalty based on an accurate determination of the current value of production is not mitigated by its having committed by long-term contract to sell this product at a price below this value.

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

The Area Supervisor has the authority to require a lessee to determine the value of the lease product by both the "ETU" and "net-realization" methods and may require the lessee to adopt as value whichever result is higher as the basis for computation of royalty for natural gas.

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so is apparently res judicata, the only question being whether the order is the court's final action.

Under controlling provisions, an Area Supervisor has the discretion to establish a cost-of-manufacture allowance for use in the net-realization method of determining value for royalty purposes. Where this allowance is well based on the actual amounts needed to process out by-products of the crude gas, it will be upheld in the absence of a clear showing that it is erroneous.

Supron Energy Corp. et al., 46 IBLA 181 (Mar. 21, 1980)

Where the Department has not formally adopted any methodology for determining the value of production from phosphate leases, but has instead allowed lessees simply to pay royalty based on the minimum value specified in the lease after having advised them that a new method of determining a realistic value was being developed, it may assert that royalty was incorrect even after it has accepted these royalty payments, and may impose the method as approved by the Secretary.

Stauffer Chemical Co. et al., 49 IBLA 381 (Sept. 5, 1980)

FEES AND COMMISSIONS

Where a mining claimant timely tendered payment to cover service fees for recording 70 mining claim notices of location, but also included four additional mining claim notices which she did not intend to maintain but filed merely for informational purposes, and on appeal she clarifies her intent concerning the four claims and unclear markings on maps which were to show that the four claims were "canceled," the payment and filing will be deemed to have been timely made as to the 70 claims if payment is subsequently made pursuant to a notice given.

Ann M. Warnke, 45 IBLA 305 (Feb. 6, 1980)

Management overhead costs are not recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

U.S. Steel Corp., 50 IBLA 190 (Sept. 30, 1980)
87 I.L. 473

PAYMENTS

Where a mining claimant timely tendered payment to cover service fees for recording 70 mining claim notices of location, but also included four additional mining claim notices which she did not intend to maintain but filed merely for informational purposes, and on appeal she clarifies her intent concerning the four claims and unclear markings on maps which were to show that the four claims were "canceled," the payment and filing will be deemed to have been timely made as to the 70 claims if payment is subsequently made pursuant to a notice given.

Ann M. Warnke, 45 IBLA 305 (Feb. 6, 1980)

Management overhead costs are not recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

U.S. Steel Corp., 50 IBLA 190 (Sept. 30, 1980)
87 I.L. 473

Pursuant to 43 CFR 2802.1-7(3) increased charges may not be imposed retroactively, but are only to be imposed by the authorized officer after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

A grantee of a communications site right-of-way is properly held in default and his right-of-way is properly cancelled pursuant to 43 CFR 2802.1-7(d) where grantee has failed to pay proper amount of rental for 4 years.

James W. Smith, 46 IBLA 233 (Mar. 27, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by ELM that the rental due is \$1,863, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for only \$1,836 within the time required, but fails to submit the \$27 deficiency within the allowed time.

Edward Goodman, 48 IBLA 152 (June 9, 1980)

ACCOUNTS--ContinuedPAYMENTS--Continued

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental is due within 15 days from the receipt of notice that such payment is due, the offer will be disqualified under 43 CFR 3112.4-1 when the rental is not received in the proper office within 15 days from the receipt of notice that such payment is due.

Where payment must be accomplished within a specific number of days from receipt of notice, that number includes holidays and weekends which occur in the interim unless it is provided otherwise.

Gordon E. Jacober, 49 IBLA 91 (July 22, 1980)

Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering her leases, and, until such time as it is received, no "payment" of annual rental has occurred. Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when she submits payment to the BLM office administering her leases and when BLM has the opportunity either to receive or decline it.

Rose M. Keegel, 49 IBLA 106 (July 28, 1980)

The payment of advance rental in connection with an oil and gas lease offer and the acceptance of such payment by the Bureau of Land Management do not create a binding obligation on the Bureau to issue an oil and gas lease.

James Muslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

In the event that some of the land applied for in an oil and gas lease offer was unavailable, the applicant was entitled to a refund of excess rental paid, and failure of BLM to return the excess rental to the offeror after the lease issuance and prior to the next annual rental being due and payable does not prevent the lease from terminating by operation of law.

Wilfred Plomis, 51 IBLA 125 (Nov. 20, 1980)

ACQUIRED LANDS

If acquired lands sought for oil and gas leasing have been surveyed under the rectangular system of public land surveys, and their description can be conformed to that system, the lands must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner.

Where an offer for a noncompetitive oil and gas lease for acquired lands contains a defective description of the lands sought and prior to lease issuance a second offer is filed correctly describing the same lands, the lease must be cancelled to the extent of the conflict in the two offers.

Sam P. Jones, 45 IBLA 208 (Jan. 30, 1980)

ACQUIRED LANDS--Continued

There is no authority pursuant to which a pro rata or set-off formula can be read into 43 CFR 3503.3-1. Nor do the regulations require BLM to accept all tenders of rental against an anticipated unavailability of some or all of the lands included in a hardrock prospecting application, which may or may not materialize. In the event that some or all of the lands applied for are unavailable, the applicant's remedy is a refund of excess rental paid, and not a set-off against deficiencies.

Failure to remit the "full amount" of the first year's rental as defined at 43 CFR 3503.3-1(a), means failure to remit either a \$20 minimum rental for 80 or fewer acres, or the amount computed for the total acreage if known, or the total acreage computed on the basis of 40 acres for each smallest subdivision of the acreage involved in the application. An application which is not accompanied by the full amount of advance rental is properly rejected.

The regulation pertaining to attorneys-in-fact, as it relates to corporate applicants, 43 CFR 3502.6-1(a)(3), calls for evidence that the individual who signs an application is also empowered to execute the instrument and bind the corporation. Where an existing file of corporate qualifications sets forth the names of individuals or corporate officers authorized to act for the corporation in mineral applications and leases, and the terms of such authority, the requirements of 43 CFR 3502.6 are fully satisfied by reference to such file. 43 CFR 3502.7-2.

Regarding curable defects in a hardrock prospecting permit application, 43 CFR 3511.2-4(b), priority exists as of the date of cure. Compliance with that regulation establishes priority for those lands not included in junior acceptable applications or otherwise unavailable for hardrock prospecting.

Duval Corp., Amax Exploration, Inc., 45 IBLA 355 (Feb. 7, 1980)

Where applicants for a preference right lease for hardrock minerals fail to present evidence showing the quantity and quality of the minerals discovered in the area covered by the prospecting permit, but rather present evidence showing only an extremely deep deposit of low value ore, which evidence is inadequate to show that they have made a discovery of a valuable mineral deposit, and they do not dispute the findings relied on by the Bureau of Land Management, their application is properly rejected.

John D. Archer, Elizabeth E. Archer, 47 IBLA 268 (May 13, 1980)

ACT OF FEBRUARY 8, 1887

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been transferred from Federal ownership.

Maudra June Underwood Lentell, Marvin Curtis Swanner, 49 IBLA 317 (Aug. 20, 1980)

ACT OF FEBRUARY 8, 1887--Continued

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the agricultural land laws on July 7, 1967, when the "Notice of Classification of Public Lands for Multiple Use Management" was published in the Federal Register.

Pamela June Wood Finch, 49 IBLA 325 (Aug. 22, 1980)

ACT OF AUGUST 18, 1894

Applications filed for temporary withdrawals of land for proposed development under the Carey Act, 43 U.S.C. § 641 (1976), must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources, 48 IBLA 250 (June 26, 1980)

The Carey Act does not give a state an absolute entitlement to select and reserve desert land acreage regardless of whether or not it has been withdrawn for other purposes. Rather, the Act does not prevent the Secretary from committing such land for any authorized use, including use as a stock driveway. Moreover, the Department has broad discretionary authority to reject Carey Act applications for lands not withdrawn from selection, subject to normal judicial restraints against arbitrary and capricious administrative actions.

Applications filed for segregation of land for proposed development under the Carey Act must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources (On Reconsideration), 49 IBLA 221 (Aug. 12, 1980)

ACT OF MARCH 15, 1910

Applications filed for temporary withdrawals of land for proposed development under the Carey Act, 43 U.S.C. § 641 (1976), must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources, 48 IBLA 250 (June 26, 1980)

Applications filed for segregation of land for proposed development under the Carey Act must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources (On Reconsideration), 49 IBLA 221 (Aug. 12, 1980)

ACT OF MAY 24, 1928

An airport lease issued under the Act of May 24, 1928, is properly canceled where the lessee fails to use the leased land as a public airport. It is irrelevant that the lessee has been unable to arrange financing for reinitiation of airport service, as the terms of the Act, regulations, and lease require that the lands

ACT OF MAY 24, 1928--Continued

be used as an airport and provide for no dispensation of this requirement.

Jose Rodriguez, 49 IBLA 258 (Aug. 18, 1980)

ACT OF AUGUST 11, 1955

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void at initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Harold M. Voris, 48 IBLA 206 (June 16, 1980)

ACT OF AUGUST 27, 1958

Mining claims located on lands subject to valid, ongoing, and pre-existing rights-of-way granted to the State of Idaho pursuant to the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), to use the lands for materials for highway construction, are null and void at initio.

James F. Percorn, Wayne A. Reddekopp, 50 IBLA 414 (Oct. 24, 1980)

ACT OF DECEMBER 24, 1970

Where the Bureau of Land Management rejects an application to lease for geothermal resources solely on the objection of the commanding officer, Fallon Naval Air Station, and where Bureau officials did not make an independent determination whether leasing the lands is in the public interest, the rejection is not a proper exercise of discretion.

Occidental Geothermal, Inc., 48 IBLA 400 (July 11, 1980)

ACT OF SEPTEMBER 28, 1976

The Secretary of the Interior is not precluded from contesting a mining claim by the provisions of sec. 6, Act of Sept. 28, 1976, P.L. 94-429, 16 U.S.C. § 1905 (1976), where a contest complaint has been filed within 2 years of the date of enactment of the statute.

United States v. Roy Peterson & Charles R. Sweet, 47 IBLA 92 (Apr. 23, 1980)

Mining claims located in units of the National Park System must be recorded within 1 year of the date of enactment of the Mining in the Parks Act, sec. 8 of the Act of Sept. 28, 1976, 16 U.S.C. § 1907 (1976), rather than within 3 years of the enactment of the Federal Land Policy and Management Act of 1976, Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976).

Elden A. LeRoy, Dorothy A. LeRoy, 49 IBLA 320 (Aug. 20, 1980)

ADMINISTRATIVE AUTHORITY

(See also Delegation of Authority, Federal Employees & Officers, Secretary of the Interior--if included in this Index.)

GENERALLY

So long as the legal title to public lands remains in the United States, it has the power, after proper notice and upon adequate hearing, to determine whether a millsite claim is valid, and if it be found invalid, to declare it null and void.

United States of America v. Utah International, Inc., 45 IBLA 73 (Jan. 17, 1980)

A Presidential proclamation, which extended the boundaries of a forest reserve and which specifically stated that prior proclamations respecting the reserve were "superseded," had the effect of and was construed as restoring to entry lands earlier withdrawn by a Secretarial order which reserved from public entry, for protection of giant sequoia trees, a township situated within the boundaries of the forest reserve. This conclusion is particularly compelling in view of the long continued course of administrative action treating the subject township as having been restored to entry for purposes of prospecting, locating and developing mineral resources, subject to compliance with the rules and regulations pertaining to forest reserves.

Dolores Olsen and Wesley E. Mace, et al., 45 IBLA 232 (Feb. 4, 1980)

In granting a right-of-way over public lands pursuant to the Federal Aid Highway Act of 1958, 23 U.S.C. § 317 (1976), the Secretary of the Interior does not give up administrative authority over the lands subject to the right-of-way. Subsequent issuance of a patent for lands encompassing a Federally granted right-of-way issued under the Federal Aid Highway Act, supra, does not change the Secretary's jurisdiction over the right-of-way grant.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Reliance upon erroneous information given by BLM employees cannot confer upon an oil and gas lease applicant any rights not authorized by law.

Mary E. Cummings, 47 IBLA 10 (Apr. 10, 1980)

A hardrock prospecting permit erroneously issued for lands already subject to such a permit must be canceled to the extent of conflict.

Reliance on incomplete records maintained by Federal land offices cannot confer upon a hardrock prospecting permittee any rights in derogation of a prior permittee.

ASARCO, Inc., 47 IBLA 14 (Apr. 11, 1980)

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey or the Bureau of Land Management to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Bass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

ADMINISTRATIVE AUTHORITY--ContinuedGENERALLY--Continued

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Alice E. Deetz, 48 IBLA 59 (May 29, 1980)

Reliance upon erroneous information given by ELM employees cannot confer upon an applicant for millsite patent any rights not authorized by the regulations.

Morrill A. Nielson, 48 IBLA 398 (July 11, 1980)

The Department of the Interior, as an agency of the executive branch of Government, is not the proper forum to decide whether or not the recordation of winning claims provisions of the Mining in the Parks Act, 90 Stat. 1342, 16 U.S.C. § 1907 (1976), are constitutional.

Elden A. LeRoy, Dorothy A. LeRoy, 49 IBLA 320 (Aug. 20, 1980)

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Abner Weed, 50 IBLA 141 (Sept. 26, 1980)

As the Department's final review authority on decisions relating to the public lands, the Board of Land Appeals exercises all the powers which the Department would have in making an initial decision.

Frederick H. Larsen v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

ESTATE

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Alva F. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Dollie L. Glaab, 48 IBLA 404 (July 11, 1980)

Reliance upon erroneous advice or incomplete information provided by Departmental employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute for his failure to comply with its requirements.

Elden A. LeRoy, Dorothy A. LeRoy, 49 IBLA 320 (Aug. 20, 1980)

Stephen Greist, 51 IBLA 287 (Dec. 17, 1980)

ADMINISTRATIVE AUTHORITY--ContinuedESTOPPEL--Continued

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

LACHES

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

ADMINISTRATIVE PRACTICE

A long continued course of action by administrative agencies regarding an interpretation of the law within their jurisdictions should not be departed from by the agencies unless such course of action is clearly erroneous.

Dolores Olsen and Wesley E. Mace, et al., 45 IBLA 232 (Feb. 4, 1980)

Where a majority of the Board of Land Appeals has ruled that an agreement between a filing service company and its clientele create no interest in the company and its president which would violate the regulations requiring disclosure of other interests in the lease offers and which preclude multiple filings in simultaneous filing-drawing procedures and that the president's filing an offer in his own name competing with the clientele of the company does not violate the regulations, a case involving similar factual and legal issues will follow the Board's majority position.

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing will be denied as well as his request for further suspension of the case.

Jack Zuckerman, 45 IBLA 337 (Feb. 7, 1980)

Management overhead costs are not recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

ADMINISTRATIVE PRACTICE--Continued

Decisions of the Interior Board of Land Appeals are indexed, digested, and available for public inspection pursuant to published Departmental regulations. They meet the requirements of the Administrative Procedure Act and serve as binding Departmental precedents. However, adjudicative decisions by local Bureau of Land Management offices do not meet requirements of the Administrative Procedure Act and are not binding precedents.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980)
87 I.D. 110

The procedures followed by the Department of the Interior in the initiation, prosecution, and deciding of mining contest cases are in full compliance with the Administrative Procedure Act.

United States v. Joseph J. Segna et al., 49 IBLA 73 (July 22, 1980)

Where the Bureau of Land Management has rejected desert land entry applications because cultivation of the jojoba plant would not meet the requirements of the Desert Land Act, and where appellants submit extensive data and analysis in an attempt to rebut the BLM conclusion, the cases may be remanded to BLM for further consideration and development of the record.

Joanne F. Wright et al., 49 IBLA 237 (Aug. 18, 1980)

ADMINISTRATIVE PROCEDURE

(See also Appeals, Confidential Information, Contests & Protests, Hearings, Judicial Review, Public Records, Regulations, Rules of Practice--if included in this Index.)

GENERALLY

Where a Native corporation has pending an application to acquire land, which land was awarded to an Alaska Native by BLM pursuant to a Native allotment application, the Native corporation is a party adversely affected by the decision of BLM and therefore has a right to appeal pursuant to 43 CFR 4.410, from the BLM decision holding the Native allotment application for allowance and will be afforded the opportunity to contest the Native allotment application.

Ouzinkie Native Corp. v. Edward Orheim, Sr., 45 IBLA 198 (Jan. 30, 1980)

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing will be denied as well as his request for further suspension of the case.

Jack Zuckerman, 45 IBLA 337 (Feb. 7, 1980)

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal which is limited to those issues must be dismissed.

Texas Oil & Gas Corp., 46 IBLA 50 (Feb. 20, 1980)

Where Bureau of Land Management determines that an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IBLA 165 (Mar. 21, 1980)

The effect of a timely filed notice of appeal is to suspend the authority of the deciding official to exercise jurisdiction relating to the subject of the appeal. It does not have the effect, however, of suspending the authority of BLM to act on matters which, while related to the subject of the appeal, are nevertheless functionally independent therefrom.

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Evan Chukwak, 47 IBLA 241 (May 13, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order, which temporarily suspended oil and gas leasing, and was issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department. An appeal which is limited to those issues must be dismissed.

William E. Jeffers, Jr., William E. Jeffers, 49 IBLA 264 (Aug. 18, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of a policy directive issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal limited to those issues must be dismissed.

James R. Learned et al., 50 IBLA 416 (Oct. 24, 1980)

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Lite Sabin, 51 IBLA 226 (Dec. 15, 1980) 87 I.L. 610

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION

The Board of Land Appeals is obliged to consider everything contained in the record in determining all matters relevant to the disposition of an appeal.

M. S. Mack, 45 IBLA 99 (Jan. 17, 1980)

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1973, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations amended in 1976 with retroactive effect. However, where the application is summarily rejected solely for the reason that the applicant's supplemental submission is "inadequate," without identifying the deficiency, the decision will be vacated and the case remanded for readjudication.

Kin-Ark Corp., 45 IBLA 159 (Jan. 23, 1980) 87 I.L. 14

Where, in the hearing of a mining claim contest in which the presence of a mineral deposit within the limits of a claim is at issue and the claim is accessible, it is established that the Government mineral examiner made no professional examination of certain of the contested claims, the testimony of the Government mineral examiner, without more, is insufficient to establish a prima facie case of invalidity.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

The BLM may not summarily reject a mineral patent application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

Big Horn Limestone Co., 46 IBLA 98 (Feb. 28, 1980)

Where the Government contests the validity of a mining claim for nonperformance of annual assessment work, there is nothing inherent or implied in that action which requires a conclusion that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the Government that "property rights in the claim have been established by the making of a valid location."

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aidatelle Frown et al., 48 IBLA 267 (June 30, 1980) 87 I.L. 248

Where the Bureau of Land Management rejects a competitive oil and gas lease offer as too low and provides no factual explanation to the offeror and where it appears from the record that the decision was not based on a reasoned evaluation of the facts, the offeror is entitled to readjudication of the bid. The case will be remanded to BLM for readjudication where subsequent justification for the rejection submitted to the Board of Land Appeals is insufficient to permit reevaluation of the bid by the Board on appeal.

Yates Petroleum Corp., 51 IBLA 181 (Dec. 2, 1980)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE LAW JUDGES

When a party to an Indian probate proceeding appears without an attorney, the Administrative Law Judge has a duty not to be a mere umpire, but to see that all relevant facts are developed.

Where a party to an Indian probate proceeding was not represented by counsel and was obviously unprepared for proper presentation of testimony and ignorant of significance of the facts, the Administrative Law Judge had the duty to see that all relevant facts and circumstances, both favorable and unfavorable to the parties, were brought out.

Estate of Cecelia Hummingbird French, 8 IBIA 102 (June 20, 1980)

In civil penalty proceeding concerning an alleged violation of the Eagle Protection Act, proof of conduct in violation of the Act must appear of record. Where the record fails to establish proof of an offer to sell an artifact agreed to be an eagle, there is no basis for assessment of a civil penalty.

Angel Nuñez v. U. S. Fish & Wildlife Service, 4 CHA 25 (July 1, 1980)

ADMINISTRATIVE PROCEDURE ACT

Approval of decedent's will which omits appellee from inheritance precludes consideration by the Department of appellee's tardy claims that decedent was her father, since 5 U.S.C. § 557(c) (1976) (Administrative Procedure Act) limits findings to those questions necessary to the disposition of the pending matter at issue.

Estate of Charles Hall, Sr., 8 IBIA 53 (Mar. 28, 1980)

The procedures followed by the Department of the Interior in the initiation, prosecution, and deciding of mining contest cases are in full compliance with the Administrative Procedure Act.

United States v. Joseph J. Segna et al., 49 IBIA 73 (July 22, 1980)

Due process consists of notice and an opportunity for hearing. Although the contestee in a Government contest proceeding under the Administrative Procedure Act has a right to be represented by counsel, due process does not require that the Department of the Interior hold a second hearing because appellant did not avail himself of that right at the first hearing.

United States v. Jack McLean, 50 IBIA 290 (Oct. 7, 1980)

ADMINISTRATIVE REVIEW

The right of appeal is limited to a party to a case adversely affected by a decision of the Bureau of Land Management, and an appeal from a timber sale notice will be remanded to the Bureau of Land Management for treatment as a protest. However, under the circumstances presented here, where the Bureau of Land Management has reviewed the protestant's reasons and, in effect, has made its decision communicating it to the protestant and this Board, no purpose would be served by remanding the case and the Board will consider the matter on its merits.

Julie Adams et al., 45 IBIA 252 (Feb. 4, 1980)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

Where oil and gas lease offers have been rejected because of a moratorium on the leasing of the subject lands which was imposed by the direct order of the Secretary of the Interior, and the rejected applicant has filed suit, now pending, for judicial review of the legality of the Secretary's order, and also makes a contemporaneous appeal to the Board of Land Appeals, the Board will not await the outcome of the judicial proceedings, but will summarily dismiss the appeal.

Texas Oil & Gas Corp., 46 IBIA 50 (Feb. 20, 1980)

Where a mining claimant attempts to file notices of location for six claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only four of such claims, BLM shall require the claimant to select four claims to which the money tendered shall be applied. The remaining two claims are properly declared abandoned and void in accordance with 43 CFR 3833.4.

Robert L. Steele, 46 IBIA 80 (Feb. 22, 1980)

Where facts and law are properly set forth and applied in Administrative Law Judge decision holding lode mining claims void for lack of discovery, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

United States v. Keith Lindsey, 49 IBIA 344 (Aug. 25, 1980)

When a Bureau of Land Management decision declares mining claims abandoned and void for failure to timely file a copy of evidence of assessment work or notice of intention to hold as required by 43 U.S.C. § 1744 (1976) (FLPMA) and 43 CFR 3833.2-1(a), and on appeal an assertion is made that the material was properly submitted but under a different spelling of the name of the claims, the decision may be set aside and the case remanded for review.

Rudolph S. Dohnik, 50 IBIA 225 (Sept. 30, 1980)

Where an individual is named as an "adverse party" in a BLM decision which is favorable to that person, who then is duly served with copies of a notice of appeal and statement of reasons challenging the validity of BLM's decision before the Board of Land Appeals and seeking reversal of that decision, but decides not to participate in the appellate proceedings before the Board, the matter becomes res judicata upon the rendering of the Board's decision, and the party may not subsequently challenge this decision by filing a new appeal of his own before the Board for readjudication of the same matter.

Donald W. Cover, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBIA 306 (Oct. 14, 1980)

BURDEN OF PROOF

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to location, the claimant, as proponent of the rule, has the ultimate burden of proof as to validity of the claim. The Government, however, must initially present sufficient evidence to establish a

ADMINISTRATIVE PROCEDURE--ContinuedBURDEN OF PROOF--Continued

prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.L. 34

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

United States v. Ludwig G. Rosenkranz, 46 IBLA 109 (Feb. 29, 1980)

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Joseph R. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

United States v. Roy Peterson & Charles R. Sweet, 47 IBLA 92 (Apr. 23, 1980)

In a contest proceeding the Government has the burden of establishing a prima facie case of noncompliance with the requirements for trade and manufacturing sites. The burden then shifts to the applicant to show by a preponderance of the evidence that he used, occupied, and improved the site for trade, manufacture, or other productive industry.

United States v. Viggo Thor Brandt-Erichsen, 46 IBLA 239 (Mar. 27, 1980)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

United States v. James S. Sette, 46 IBLA 335 (Apr. 4, 1980)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to

ADMINISTRATIVE PROCEDURE--ContinuedBURDEN OF PROOF--Continued

perform discovery work for claimants nor to explore beyond a claimant's workings.

United States v. Robert Chambers, 47 IBLA 102 (Apr. 23, 1980)

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Hyatt Lake Homeowners Ass'n, 48 IBLA 159 (June 9, 1980)

The assertion that annual assessment work has not been performed is the assertion of a negative fact. If an examination of the mining claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence to this effect would be sufficient to establish a prima facie case. It would then devolve upon the claimant to show by a preponderance of the countervailing evidence that he has substantially complied with the statute.

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.L. 248

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bert N. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

The Board adopts a decision of an Administrative Law Judge holding mining claims null and void for lack of discovery of a valuable deposit of an uncommon variety of limestone, where nondiscovery is established by the totality of the evidence.

United States v. Joseph J. Segna et al., 49 IBLA 73 (July 22, 1980)

ADMINISTRATIVE PROCEDURE--ContinuedBURDEN OF PROOF--Continued

The Board adopts a decision of an Administrative Law Judge holding a placer mining claim null and void for lack of discovery of a valuable mineral deposit within the limits of the claim, where nondiscovery clearly is established by the evidence of record.

United States v. Charles M. Ledford et al., 49 IBLA 353 (Aug. 29, 1980)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.L. 386

In a Government contest of a mining claim for which an application for patent has been filed, the Government assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that the claims are valid. A claimant establishes the validity of his claims by a preponderance of the evidence where the claimant's witness, testifying to the validity of the contested claims, is found to be more credible.

United States v. Cornelius E. Mannix, 50 IBLA 110 (Sept. 24, 1980)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. R. H. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

In a contest proceeding to challenge a headquarters site entry, the Government has the burden of establishing a prima facie case of noncompliance with the requirements for headquarters sites. The headquarters site applicant then has the burden of establishing entitlement to the land by showing compliance with the law. 43 U.S.C. § 687a (1976). Where such an applicant asserts that he has operated a cabin and boat rental business on the site, yet fails to produce sufficient evidence to show that he was engaged in a trade, manufacture or other productive industry from which he reasonably hoped to derive a profit, the application to purchase must be rejected.

United States v. Jack McLean, 50 IBLA 290 (Oct. 7, 1980)

ADMINISTRATIVE PROCEDURE--ContinuedBURDEN OF PROOF--Continued

When the Government contests mining claims on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case. When it has done so, the burden shifts to the claimants to show, by a preponderance of the evidence, that a discovery of a valuable mineral deposit has been made and still exists within the limits of each claim under contest.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining examiner testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable deposit.

United States v. W. S. Wood et al., 51 IBLA 301 (Dec. 18, 1980) 87 I.L. 626

DECISIONS

The right of appeal is limited to a party to a case adversely affected by a decision of the Bureau of Land Management, and an appeal from a timber sale notice will be remanded to the Bureau of Land Management for treatment as a protest. However, under the circumstances presented here, where the Bureau of Land Management has reviewed the protestant's reasons and, in effect, has made its decision communicating it to the protestant and this Board, no purpose would be served by remanding the case and the Board will consider the matter on its merits.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

As precedents, decisions of the Board of Land Appeals should be cited by the volume and page number given on the bottom of the page of the decision and not to the IBLA docket number shown on the top of the decision.

Decisions of the Interior Board of Land Appeals are indexed, digested, and available for public inspection pursuant to published Departmental regulations. They meet the requirements of the Administrative Procedure Act and serve as binding Departmental precedents. However, adjudicative decisions by local Bureau of Land Management offices do not meet requirements of the Administrative Procedure Act and are not binding precedents.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980) 87 I.L. 110

Where BLM incorporates by reference a Geological Survey memorandum into its decision rejecting a competitive oil and gas lease offer and where such memorandum was the principal basis on which the decision rejecting the offer was made, the memorandum must be made available to the offeror.

Southern Union Exploration Co., 51 IBLA 89 (Nov. 5, 1980)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS

Where a mining claim contestee fails to appear at a contest hearing and merely sends a message stating that he will not appear, without stating the reasons for his absence, a subsequent motion to reschedule the hearing and reopen the record is properly denied, as the regulations provide that a postponement may be granted only pursuant to a request made no later than the hearing date and stating in detail the reasons why a postponement is necessary.

The asserted inability of a contestee to drive an automobile due to his taking medication is not an extreme emergency which justifies beyond question the granting of a postponement of the hearing where it is not impossible to get to a hearing site by public transportation. Nor is restricted mobility due to arthritis justification for a postponement where the record shows that it is an ongoing condition which could have been anticipated, and that transportation to the hearing site could have been arranged by exercise of proper diligence.

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record as completed at the hearing, despite the absence of evidence in support of the party's case.

New evidence offered on appeal after an initial decision is rendered by an Administrative Law Judge may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Richard H. Franklin, 45 IBLA 54 (Jan. 14, 1980)

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard G. Clemans et al., 45 IBLA 64 (Jan. 17, 1980)

Timely appeal to the Board of Land Appeals suspends the effect of a Bureau of Land Management decision pending outcome of the appeal. Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

State of Alaska, 46 IELA 12 (Feb. 20, 1980)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Where Bureau of Land Management determines that an application for a Native allotment should be rejected for failure to establish use and occupancy of the land,

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IELA 165 (Mar. 21, 1980)

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Joseph R. and Aletha Henri, 46 IELA 221 (Mar. 27, 1980)

Where a corporate simultaneous oil and gas lease offeror alleges no facts which could disprove its failure to comply with 43 CFR 3102.4-1, no hearing will be granted as requested.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980)
87 I.F. 110

Where disputed issues of fact are raised by an Indian allotment applicant concerning whether (1) the applicant's occupancy qualifies her for an Indian allotment, (2) the applied for land taken together with other patented land would be enough to sustain a family of four through the grazing season, and (3) the public interest could best be served if the land were retained in Federal ownership, the applicant is entitled to notice and an opportunity for hearing before the application is rejected on the record.

Lorinda L. Hulsman, 46 IBLA 303 (Mar. 31, 1980)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Evan Chukwak, 47 IELA 241 (May 13, 1980)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Alva F. Rockwell and Alva A. Rockwell, 47 IELA 272 (May 13, 1980)

Max Weiss, 49 IELA 332 (Aug. 25, 1980)

George H. Fernimore et al., 50 IELA 280 (Oct. 6, 1980)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Where a question of fact exists as to when accreted land was formed in front of a patented upland lot along the Yellowstone River and whether title to the accreted land is in the United States and, therefore, subject to oil and gas leasing, a hearing may be ordered by this Board pursuant to 43 CFR 4.415.

Eldin L. R. Johnson, Marilyn Johnson, 47 IBLA 366 (May 21, 1980)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

In civil penalty proceeding concerning an alleged violation of the Eagle Protection Act, proof of conduct in violation of the Act must appear of record. Where the record fails to establish proof of an offer to sell an artifact agreed to be an eagle, there is no basis for assessment of a civil penalty.

Angel Nunez v. U. S. Fish & Wildlife Service, 4 OHA 25 (July 1, 1980)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Mary Semone, 49 IBLA 213 (Aug. 11, 1980)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where there is not sufficient reason shown to disturb an Administrative Law Judge's finding that the prudent man-marketability test was met as of July 23, 1955, and continuously thereafter by mining claimants who extracted and profitably sold sand and gravel from the claims prior to that date and continuously thereafter, the decision will be sustained on appeal.

The Board of Land Appeals will not order a further hearing in a mining claim contest case where a patent application has been filed merely because the evidentiary record is inadequate to invalidate the claims for lack of a discovery of a valuable mineral deposit, if the claimant is found to have met the discovery test.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.D. 386

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

John J. Schnafel, 50 IBLA 201 (Sept. 30, 1980)

A second hearing of a Government mining contest will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where he was actually present at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result. A petition to reopen a hearing of a Government mining contest will be denied when the contestee offers no valid justification for the neglect to offer evidence which was or could have been available at the original hearing. A further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

Where issues of material fact are in dispute, due process requires that, before a decision is reached to reject an application for an allotment, the applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of witnesses may be submitted.

The Court of Appeals for the Ninth Circuit has held that application of the Departmental contest procedures to provide the allotment applicant with notice and an opportunity for a hearing prior to adverse action on the allotment application complies, at least facially, with the due process requirements set forth in the court's mandate in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976). Pence v. Andrus, 586 F.2d 733 (9th Cir. 1978).

Mary DeVaney, 51 IBLA 165 (Nov. 26, 1980)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Natalia Kepuk et al., 51 IBLA 170 (Nov. 26, 1980)

Where BLM issues a decision to cancel a mining claim occupancy lease, which decision is based on a Forest Service report showing that someone other than the lessee has occupied the leased premises and that lessee has admitted that she was away from them; where lessee asserts that the claim is nevertheless "a principal place of residence" and requests a hearing; and where the record is insufficient to resolve this question, the matter will be referred for a hearing.

Viola D. LeMaster, 51 IBLA 291 (Dec. 17, 1980)

ADMINISTRATIVE PROCEDURE--Continued

JUDICIAL REVIEW

Where oil and gas lease offers have been rejected because of a moratorium on the leasing of the subject lands which was imposed by the direct order of the Secretary of the Interior, and the rejected applicant has filed suit, now pending, for judicial review of the legality of the Secretary's order, and also makes a contemporaneous appeal to the Board of Land Appeals, the Board will not await the outcome of the judicial proceedings, but will summarily dismiss the appeal.

Texas Oil & Gas Corp., 46 IBLA 50 (Feb. 20, 1980)

AGENCY

Where a majority of the Board of Land Appeals has ruled that an agreement between a filing service company and its clientele create no interest in the company and its president which would violate the regulations requiring disclosure of other interests in the lease offers and which preclude multiple filings in simultaneous filing-drawing procedures and that the president's filing an offer in his own name competing with the clientele of the company does not violate the regulations, a case involving similar factual and legal issues will follow the Board's majority position.

Jack Zuckeraman, 45 IBLA 337 (Feb. 7, 1980)

AIRPORTS

An airport lease issued under the Act of May 24, 1928, is properly canceled where the lessee fails to use the leased land as a public airport. It is irrelevant that the lessee has been unable to arrange financing for reinitiation of airport service, as the terms of the Act, regulations, and lease require that the lands be used as an airport and provide for no dispensation of this requirement.

Jose Rodriguez, 49 IBLA 258 (Aug. 18, 1980)

ALASKA

GENERALLY

Where a Native corporation has pending an application to acquire land, which land was awarded to an Alaska Native by BLM pursuant to a Native allotment application, the Native corporation is a party adversely affected by the decision of BLM and therefore has a right to appeal pursuant to 43 CFR 4.410, from the BLM decision holding the Native allotment application for allowance and will be afforded the opportunity to contest the Native allotment application.

Ouzinkie Native Corp. v. Edward Opheim, Sr., 45 IBLA 198 (Jan. 30, 1980)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

The Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), extinguished aboriginal occupancy claims of Alaska Natives effective Dec. 18, 1971, and a Native allotment application then pending in the Bureau of Land Management and purportedly "amended" after that date to include an additional 100 acres cannot be granted for the additional acreage unless it be shown

ALASKA--Continued

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

that the amendment was pending in the Department prior to the repeal of the Act.

Ouzinkie Native Corp. v. Edward Opheim, Sr., 45 IBLA 198 (Jan. 30, 1980)

Alaskan Native aboriginal occupancy claims, or claims under the organic Act of Alaska of May 17, 1884, and the Act of June 6, 1900, were extinguished by the Alaska Native Claims Settlement Act. A Native applicant's rights under the 1906 Native Allotment Act are based upon his or her individual compliance with that Act and not upon any ancestral use of the land.

William Bouwens et al., 46 IBLA 366 (Apr. 8, 1980)

GRAZING

Where BLM renewed an Alaska grazing lease on lands for which the State of Alaska had previously filed a selection application, and where it first expressly advised the lessee that his lease would be subject to cancellation when the State's application was resolved, BLM may cancel the lease following tentative approval of the State selection application preparatory to transferring control over the lands to the State, as 43 CFR 4230.1 gives it the authority to cancel Alaska grazing leases to permit utilization of the land for other purposes in the public interest.

Estate of C. Walter Keaster, 47 IBLA 363 (May 21, 1980)

HEADQUARTERS SITES

A headquarters site application which states that trapping, hunting, fishing, and renting cabins to hunters, fishermen, and snowmobiles is the commercial operation engaged in on the site is properly rejected when the applicant submits no evidence that he is engaged in a commercially productive industry there, or that he actually received substantial income from guests who used the site in connection with such purposes.

"Headquarters." A headquarters site application is properly rejected when the applicant has failed to sustain his burden of showing that the site has been used as a headquarters, *i.e.*, as the usual place of business, principal office, or administrative center of his snowmobile camp. The term "headquarters" will not be construed so broadly as to include within its meaning use of a site for recreational purposes with occasional payment of use of the facilities occurring via rendering of services and helping transport building materials to the cabin sites, or by meager and incidental payments of cash.

United States v. Floyd R. Ehmman, 50 IBLA 69 (Sept. 17, 1980)

In a contest proceeding to challenge a headquarters site entry, the Government has the burden of establishing a prima facie case of noncompliance with the requirements for headquarters sites. The headquarters site applicant then has the burden of establishing entitlement to the land by showing compliance with the law. 43 U.S.C. § 687a (1976). Where such an applicant asserts that he has operated a cabin and boat rental business on the site, yet fails to produce sufficient evidence to show that he was engaged in a trade, manufacture or other productive industry from which he reasonably hoped to derive a profit, the application to purchase must be rejected.

United States v. Jack McLean, 50 IBLA 290 (Oct. 7, 1980)

ALASKA--Continued

LAND GRANTS AND SELECTIONS

Generally

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, if all else be regular.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska v. Earl G. Patterson, 46 IBIA 56 (Feb. 22, 1980)

State of Alaska, 48 IBIA 229 (June 17, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular.

State of Alaska v. Elsie John, 46 IBIA 137 (Mar. 19, 1980)

State of Alaska v. Daniel Jimmie, Bertha A. Williams, 48 IBIA 370 (July 11, 1980)

State of Alaska v. Cora John Smith, 50 IBIA 6 (Sept. 5, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notification to the State, it has an election. The State may initiate a private contest proceeding during the time prescribed to prove lack of qualification of the Native, or the State may await final decision from BLM and then appeal to this Board.

State of Alaska v. Dora David and Cathy Dick, 46 IBIA 177 (Mar. 21, 1980)

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

In treating cases similar in all respects to those encountered by the court in Aguilar v. United States, 474 F. Supp. 840 (1979), the Board will conform to the District Court's directions in that case. Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for an allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements under the Native Allotment Act, BLM must notify the State of Alaska. The State, if dissatisfied, may either initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Appeals.

Emma Jonathan Northway, 46 IBIA 326 (Apr. 4, 1980)

When there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, BLM must notify the State that, if dissatisfied, it has an election of remedies. The State may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Joan M. Newhall, 47 IBIA 85 (Apr. 21, 1980)

State of Alaska v. Moses Chythlook, 47 IBIA 249 (May 13, 1980)

NATIVE ALLOTMENTS

Where BLM classifies a 4-acre tract as suitable for disposal under the Small Tract Act, thereby segregating it from acquisition under other public land laws, then grants an individual a lease thereon with option to purchase, pursuant to which the lessee constructs buildings and occupies the tract, the protest and application of an Alaska Native, made for the first time 12 years later, will be rejected, as a matter of law and equity where the Native was claiming 160 acres of different land during the preceding 6 years, and had made no assertion of interest in the small tract, but rather had expressly acknowledged the existence of the leasehold.

Evelyn Alexander, 45 IBIA 28 (Jan. 14, 1980)

Where a State Office rejects a Native allotment application because it was not timely filed and did not have the required certification and land description, and where it is shown such deficiencies were beyond applicant's control, the case will be remanded to the State Office to allow 60 days for the deficiencies to be cured, and for the State Office, if it finds substantial compliance with the law, to apply doctrine of equitable adjudication and then to accept the application with the late filing, proper certification, and amended land description, all else being regular.

Herbert Herrmann, 45 IBIA 43 (Jan. 14, 1980)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

The Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), extinguished aboriginal occupancy claims of Alaska Natives effective Dec. 18, 1971, and a Native allotment application then pending in the Bureau of Land Management and purportedly "amended" after that date to include an additional 100 acres cannot be granted for the additional acreage unless it be shown that the amendment was pending in the Department prior to the repeal of the Act.

Where a Native corporation has pending an application to acquire land, which land was awarded to an Alaska Native by BLM pursuant to a Native allotment application, the Native corporation is a party adversely affected by the decision of BLM and therefore has a right to appeal pursuant to 43 CFR 4.410, from the BLM decision holding the Native allotment application for allowance and will be afforded the opportunity to contest the Native allotment application.

Ouzinkie Native Corp. v. Edward Orheim, Sr., 45 IBLA 198 (Jan. 30, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, if all else be regular.

Where, in a decision holding a Native allotment for approval and a State selection for rejection to the extent of a conflict, the Bureau of Land Management grants the State 30 days to initiate a private contest challenging the Native allotment, the 30-day appeal period will commence upon expiration of the 30 days accorded the State for initiation of a private contest and not with receipt of the decision.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

State of Alaska, 48 IBLA 229 (June 17, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular.

State of Alaska v. Elsie John, 46 IEIA 137 (Mar. 19, 1980)

State of Alaska v. Daniel Jimmie, Bertha A. Williams, 48 IEIA 370 (July 11, 1980)

State of Alaska v. Cora John Smith, 50 IEIA 6 (Sept. 5, 1980)

An inheritable property right in an allotment is created only if an applicant fully complies with all of the application requirements before his or her death. This right arises even though the applicant's evidence of use and occupancy has not been filed so long as the applicant has fulfilled all other requirements, because IEIA may file such evidence on behalf of the applicant's heirs.

In order for an heir to relinquish an allotment application, he or she must be the sole heir or have the authority to act on behalf of all heirs. Where, as in this case, the widow of a Native allotment applicant, who is not the sole heir, acting on her own behalf relinquishes his application and refiles for the same allotment; the relinquishment is ineffective.

Upon the death of a Native allotment applicant, IEIA may file evidence of use and occupancy for the benefit of the applicant's heirs so long as the applicant has fulfilled all other requirements for allotment. However, IEIA has no authority to relinquish the applicant's allotment during the period for filing evidence of use and occupancy.

The filing of an acceptable application for a Native allotment segregates the lands from appropriation and subsequent conflicting applications must be rejected. An erroneous notation on the tract books of relinquishment of an allotment, although it appears to reopen the land for allotment, does not cut off the rights of the first applicant as against subsequent applicants. The notation rule expressed in 43 CFR 1825.1 serves to fix the point in time when previously segregated land is returned to the public domain and is designed to give all persons wishing to apply for the land an equal chance to do so. It does not necessarily establish when a prior applicant's rights in the land have terminated.

Where a person files a Native allotment application for lands segregated from appropriation, the application is null and void ab initio and does not give rise to any equitable interest.

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Where Bureau of Land Management determines that an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IEIA 165 (Mar. 21, 1980)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notification to the State, it has an election. The State may initiate a private contest proceeding during the time prescribed to prove lack of qualification of the Native, or the State may await final decision from ELM and then appeal to this Board.

State of Alaska v. Dora David and Cathy Dick, 46 IBLA 177 (Mar. 21, 1980)

In treating cases similar in all respects to those encountered by the court in Aguilar v. United States, 474 F. Supp. 840 (1979), the Board will conform to the District Court's directions in that case. Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for an allotment under the Act of May 17, 1906, and it appears to ELM that the Native applicant has met the requirements under the Native Allotment Act, ELM must notify the State of Alaska. The State, if dissatisfied, may either initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of ELM to the Board of Appeals.

Emma Jonathan Northway, 46 IBLA 326 (Apr. 4, 1980)

Alaskan Native aboriginal occupancy claims, or claims under the organic Act of Alaska of May 17, 1884, and the Act of June 6, 1900, were extinguished by the Alaska Native Claims Settlement Act. A Native applicant's rights under the 1906 Native Allotment Act are based upon his or her individual compliance with that Act and not upon any ancestral use of the land.

The requirement that a Native allotment applicant show 5 years' use and occupancy is applicable to all public land and not just to national forest land.

Where Native allotment applicants who were 8 years and older at the date land was segregated from entry assert independent use and occupancy of the land then, the Bureau of Land Management should contest their applications, affording them notice and an opportunity for a hearing to prove the adequacy and independence of their use and occupancy, rather than reject the applications without a hearing simply because of the applicant's age on the segregative date.

William Bouvens et al., 46 IBLA 366 (Apr. 8, 1980)

A Native allotment application filed pursuant to the Alaska Native Allotment Act of 1906 must be rejected if it was not pending before the Department of the Interior on Dec. 18, 1971. Where there are factual questions concerning the pendency of an application they can best be resolved at a hearing pursuant to a Government contest.

A Native allotment applicant who is a minor is not precluded from establishing use and occupancy of the land applied for. However, such use and occupancy must be achieved as an independent citizen in his own right and must be potentially exclusive. The question of a 14-year old's independent use and occupancy is best addressed at a contest proceeding.

Eleanor H. Wood, 46 IBLA 373 (Apr. 8, 1980)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

A request, filed in 1975, to reopen a Native allotment application, which had been finally rejected in 1967, is barred by the 1971 repeal of the Native Allotment Act, since no application was "pending" on the date of the repeal.

The Alaska Native Allotment Act gives a qualified person the right to select land. This inchoate right is nonalienable, nontransferable, and noninheritable, and it terminates with death. But where an allotment selection has been made and the applicant fully complies with the law and regulations and accomplishes all that is required to be done, the right to allotment is earned and becomes a property right which is inheritable. No rights inure to the heirs of the deceased applicant where ELM was unable to verify use and occupancy for the lands described in the application and the applicant did not correct the application to reflect the lands actually used.

Where a Native allotment applicant has not established use and occupancy of the lands identified in his or her allotment application, the applicant has not substantially complied with the Alaska Native Allotment Act and equitable adjudication under 43 CFR 1871.1-1 cannot be properly invoked.

Mary Olympic, 47 IBLA 58 (Apr. 14, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaskan Native for allotment under the Act of May 17, 1906, and it appears to ELM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of ELM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Joan M. Newhall, 47 IBLA 85 (Apr. 21, 1980)

State of Alaska v. Moses Chythlook, 47 IBLA 249 (May 13, 1980)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Evan Chukwak, 47 IBLA 241 (May 13, 1980)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Mary Semone, 49 IBLA 213 (Aug. 11, 1980)

Where lands sought in a Native allotment application are described by metes and bounds despite their having been previously surveyed, and thereafter an amended application is filed subsequent to Dec. 18, 1971, seeking lands in a different township, the amended application is properly rejected as untimely.

To establish the mineral character of lands, it must be shown that the known conditions are such as to engender the belief that the lands contain mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end. The mineral character of land may be established by inference without the exposure of the mineral deposit for which the land is supposed to be valuable. Lands containing mineral of such quantity and value as to warrant a prudent man in the expenditure of his time and money with a reasonable expectation of developing a paying mine are disposable only under the mining laws.

Edith Szmyd, Beulah Hoth, 50 IBLA 61 (Sept. 15, 1980)

Where the State of Alaska lacks a cognizable interest in the specific land being sought by a Native allotment applicant because that land is either within the core township of a Native village or the Native village has received tentative approval for its selection, the State does not have standing to initiate a private contest under 43 CFR 4.450-1. It may, however, protest against the allowance of the allotment and appeal from an adverse decision under 43 CFR 4.410.

State of Alaska v. Steve Sarakovikoff et al., 50 IBLA 284 (Oct. 6, 1980)

The Act of May 17, 1906, 34 Stat. 197, as amended, 43 U.S.C. § 270-1 (1970), repealed subject to pending applications, 43 U.S.C. § 1617 (1976), authorized the Secretary to allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska to any Indian, Aleut, or Eskimo who resides in and is a Native of Alaska. No allotment shall be made to any person until said person has made proof satisfactory to the Secretary of substantially continuous use and occupancy of the land for a period of 5 years.

Where issues of material fact are in dispute, due process requires that, before a decision is reached to reject an application for an allotment, the applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of witnesses may be submitted.

The Court of Appeals for the Ninth Circuit has held that application of the Departmental contest procedures to provide the allotment applicant with notice and an opportunity for a hearing prior to adverse action on the allotment application complies, at least facially, with the due process requirements set forth

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

in the court's mandate in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976). Pence v. Andrus, 586 F.2d 733 (9th Cir. 1978).

Mary DeVaney, 51 IBLA 165 (Nov. 26, 1980)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Natalia Keruk et al., 51 IBLA 170 (Nov. 26, 1980)

NAVIGABLE WATERS

Generally

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

Appeal of Bristol Bay Native Corp., 4 ANCAE 355 (July 31, 1980) 87 I.D. 341

Appeal of Nunapitchuk, Ltd., 5 ANCAE 139 (Dec. 18, 1980)

TOWNSITES

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLEMA, Oct. 21, 1976, does not constitute a valid existing right.

Marko and Yarrow Lewis, 46 IBLA 257 (Mar. 27, 1980)

Where lands have been identified as being within a townsite by inclusion in an approved U.S. survey of the exterior boundaries of the townsite; where the townsite trustee duly receives title to these lands by patent and opens the area to settlement under the townsite laws; and where individuals, acting in reliance on explicit statements by the trustee that it is legal to do so, timely initiate settlement under governing Departmental regulations, a decision by the trustee to cancel the settlers' claims in order to reduce the size of the townsite to conform with the statutory limit will be vacated, and he will be directed instead to correct the patent by eliminating lands other than those occupied by the settlers.

A Native village corporation has no interest in lands included in a townsite prior to the enactment of the Alaska Native Claims Settlement Act, as the lands were segregated prior to this date so that ANCSA did not withdraw the lands for selection by the corporation. Accordingly, the rights of settlers and of the municipality which derive from an entitlement created

ALASKA--ContinuedTOWNSITES--Continued

prior to the Alaska Native Claims Settlement Act, are superior to the corporation's rights.

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of an occupancy claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

TRADE AND MANUFACTURING SITES

In a contest proceeding the Government has the burden of establishing a prima facie case of noncompliance with the requirements for trade and manufacturing sites. The burden then shifts to the applicant to show by a preponderance of the evidence that he used, occupied, and improved the site for trade, manufacture, or other productive industry.

A claimant of a trade and manufacturing site must show that at the time of filing his application to purchase he was engaged in trade, manufacture, or other productive industry in connection with the site. While it is not necessary for the claimant to show that all functions of the business were carried on at the site, he must show a bona fide commercial enterprise from which he reasonably hoped to derive a profit; mere preparation for a prospective business is not sufficient under the statute.

United States v. Viggo Thor Brandt-Erichsen, 46 IFLA 239 (Mar. 27, 1980)

ALASKA NATIVE CLAIMS SETTLEMENT ACTGENERALLY

The Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), extinguished aboriginal occupancy claims of Alaska Natives effective Dec. 18, 1971, and a Native allotment application then pending in the Bureau of Land Management and purportedly "amended" after that date to include an additional 100 acres cannot be granted for the additional acreage unless it be shown that the amendment was pending in the Department prior to the repeal of the Act.

Ouzinkie Native Corp. v. Edward Opheim, Sr., 45 IBLA 198 (Jan. 30, 1980)

A Native village corporation has no interest in lands included in a townsite prior to the enactment of the Alaska Native Claims Settlement Act, as the lands were segregated prior to this date so that ANCSA did not withdraw the lands for selection by the corporation. Accordingly, the rights of settlers and of the municipality which derive from an entitlement created prior to the Alaska Native Claims Settlement Act, are superior to the corporation's rights.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedADMINISTRATIVE PROCEDUREGenerally

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board withdraws its appeal.

Appeal of Elizabeth Gardner, 4 ANCAE 215 (Apr. 23, 1980)

43 CFR 4.913(b) provides:

Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary, or his delegate.

Appeal of Northway Natives, Inc., 4 ANCAE 350 (July 30, 1980)

An agreement between selecting Native corporations and a Federal agency, on lands actually used by the Federal agency, cannot be enforced in lieu of a § 3(e) determination by the Bureau of Land Management to compel conveyance to the Native corporations in accord with the agreement. ANCSA by clear language in § 3(e) mandates a Secretarial determination. While the Secretary may delegate, he may not be compelled to relinquish his statutory duty to third parties.

Where the required § 3(e) determination is crucial to conveyance, where the affected Federal agency and all affected Native corporations agree on the identification of lands actually used by the agency, where the record discloses no inconsistency between the agreement and § 3(e), where the determination has already been delayed for a significant period of time by the lack of implementing regulations and the date of publication of final regulations cannot be ascertained, the Bureau of Land Management may make a § 3(e) determination, relying on the parties' agreement for factual data, in the absence of final regulatory guidelines.

Appeal of Paug-Vik, Inc., Ltd., 5 ANCAE 59 (Sept. 24, 1980) 87 I.L. 422

Conveyances

When an entry is being excluded from a conveyance for the specific purpose of further adjudication, rather than as recognition of such entry pursuant to 43 CFR 2650.3-1(a), the conveyance document must so state.

Appeal of Ellen Demit, 4 ANCAE 217 (May 6, 1980) 87 I.L. 163

See also 4 ANCAE 240 (May 23, 1980)

Appeal of Leroy Isaac, 4 ANCAE 232 (May 7, 1980)

See also 4 ANCAE 242 (May 23, 1980)

Decision to Issue Conveyance

A redetermination of navigability by the Bureau of Land Management which modifies a published decision is itself a decision requiring publication in accordance with 43 CFR 2650.7.

Appeal of Bristol Bay Native Corp., 4 ANCAE 222 (May 6, 1980) 87 I.L. 164

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Decision to Issue Conveyance--Continued

When the Bureau of Land Management redetermines its own finding of navigability which would result in a change from its published Decision to Issue Conveyance, and when the Bureau of Land Management has, or is given, jurisdiction to make such redetermination, then that redetermination is itself a decision requiring public notice through publication in accordance with 43 CFR 2650.7.

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Decisions by the Alaska Native Claims Appeal Board, made pursuant to its authority in 43 CFR 4.1(b) (5), are not decisions of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Redetermination by the Bureau of Land Management from nonnavigability to navigability of water bodies not the subject of an appeal is a decision "proposing to convey lands," and notice thereof must be given pursuant to 43 CFR 2650.7(d).

Appeal of Bristol Bay Native Corp., 4 ANCA 355
(July 31, 1980) 87 I.L. 341

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Appeal of Nunapitchuk, Ltd., 5 ANCA 139 (Dec. 18, 1980)

Publication

A redetermination of navigability by the Bureau of Land Management which modifies a published decision is itself a decision requiring publication in accordance with 43 CFR 2650.7.

Appeal of Bristol Bay Native Corp., 4 ANCA 222 (May 6, 1980) 87 I.L. 164

When the Bureau of Land Management redetermines its own finding of navigability which would result in a change from its published Decision to Issue Conveyance, and when the Bureau of Land Management has, or is given jurisdiction to make such redetermination, then that redetermination is itself a decision requiring public notice through publication in accordance with 43 CFR 2650.7.

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Decisions by the Alaska Native Claims Appeal Board made pursuant to its authority in 43 CFR 4.1(b) (5), are not decisions of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Redetermination by the Bureau of Land Management from nonnavigability to navigability of water bodies not the subject of an appeal is a decision "proposing

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Publication--Continued

to convey lands," and notice thereof must be given pursuant to 43 CFR 2650.7(d).

Appeal of Bristol Bay Native Corp., 4 ANCA 355
(July 31, 1980) 87 I.L. 341

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Appeal of Nunapitchuk, Ltd., 5 ANCA 139 (Dec. 18, 1980)

ALASKA NATIVE CLAIMS APPEAL BOARD

AppealsGenerally

Denial of an appeal brought prematurely does not prejudice any right an appellant may have to appeal a future decision of the Bureau of Land Management to convey lands, provided such appeal is properly filed pursuant to applicable regulations.

State of Alaska, 5 ANCA 118 (Dec. 1, 1980)

Decisions

The Board is bound by statements of policy made by the Secretary of the Interior and contained in a published Departmental Manual Release or in a Secretarial Order published in the Federal Register.

Appeal of Bruce McAllister, 4 ANCA 294 (June 30, 1980)
87 I.L. 286

Appeal of Nels Pilskog, 4 ANCA 307 (July 8, 1980)

Appeal of Alan V. Hanson, 4 ANCA 321 (July 24, 1980)

Appeal of C. E. Sharp, 4 ANCA 328 (July 24, 1980)

Appeal of Raymond E. Koon, 4 ANCA 335 (July 24, 1980)

Appeal of State of Alaska, 4 ANCA 342 (July 24, 1980)

Appeal of State of Alaska, 5 ANCA 4 (Aug. 20, 1980)
87 I.L. 366

Appeal of Daniel B. Winn, 5 ANCA 19 (Aug. 25, 1980)
87 I.L. 372

Appeal of M. Walter Johnson et al., 5 ANCA 32
(Aug. 25, 1980)

Appeal of Theodore A. Richards, 5 ANCA 39 (Aug. 26, 1980)

Appeal of Judith P. Miller, 5 ANCA 46 (Aug. 26, 1980)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--ContinuedDismissal

Where an appellant does not include in a notice of appeal a claim of property interest in lands affected by the decision being appealed and a statement of the facts relied upon for standing, and such information is not filed within 30 days after filing the notice of appeal as required by regulations in 43 CFR 4.903, the appeal is subject to summary dismissal in the discretion of the Board.

Where an appellant fails to claim a property interest in land affected by the decision appealed, and further fails to file a statement of standing when specifically ordered to do so by this Board, the appeal will be summarily dismissed for failure to satisfy standing requirements in 43 CFR 4.903.

Appeal of Charles G. and Sara Hornberger, 4 ANCAE 112 (Jan. 9, 1980)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a voluntary dismissal.

Appeal of Bristol Bay Native Corp., 4 ANCAE 130 (Jan. 21, 1980)

Appeal of Doyon, Ltd., 4 ANCAE 132 (Jan. 31, 1980)

Appeal of Nels Swanberg, et al., 5 ANCAE 145 (Dec. 18, 1980)

Appeal of Bering Straits Native Corp., 5 ANCAE 146 (Dec. 18, 1980)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when there remain therein no issues to be resolved by the Board.

Appeal of State of Alaska, Dept. of Transportation and Public Facilities, 4 ANCAE 147 (Feb. 27, 1980)

Appeal of Bristol Bay Native Corp., 4 ANCAE 168 (Feb. 28, 1980)

Appeal of Ellen Demit, 4 ANCAE 217 (May 6, 1980) 87 I.D. 163

See also 4 ANCAE 240 (May 23, 1980)

Appeal of Leroy Isaac, 4 ANCAE 232 (May 7, 1980)

See also 4 ANCAE 242 (May 23, 1980)

Appeal of Northway Natives, Inc., 4 ANCAE 238 (May 20, 1980)

Appeal of State of Alaska, Dept. of Transportation and Public Facilities, 4 ANCAE 244 (May 28, 1980)

Appeal of Jerry Liboff, 4 ANCAE 314 (July 9, 1980)

Appeals of Jim Garfield, et al. and Richard Stoffel, 5 ANCAE 1 (Aug. 20, 1980)

Appeal of Matanuska-Susitna Borough, 5 ANCAE 54 (Sept. 10, 1980)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a motion to dismiss.

Appeal of the State of Alaska, 4 ANCAE 171 (Feb. 29, 1980)

Appeal of Doyon, Ltd., 5 ANCAE 57 (Sept. 22, 1980)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--ContinuedDismissal--Continued

A notice of appeal to the Alaska Native Claims Appeal Board must be dismissed where it is not timely filed since the requirement of timely filing is jurisdictional.

Appeal of Northway Natives, Inc., 4 ANCAE 207 (Apr. 21, 1980)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board withdraws its appeal.

Appeal of Elizabeth Gardner, 4 ANCAE 215 (Apr. 23, 1980)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when no issues remain to be resolved by the Board.

Appeal of Bristol Bay Native Corp., 4 ANCAE 222 (May 6, 1980) 87 I.D. 164

Absent reasons justifying continuance of his appeal, an appeal will be dismissed as to one appellant in a group of appellants when that individual withdraws his appeal. Therefore Paul Jones is hereby dismissed as an appellant in this matter.

Appeal of Lillie Pleasant et al., 4 ANCAE 234 (May 9, 1980)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a withdrawal of appeal.

Appeal of NANA Regional Corp., Inc., 4 ANCAE 236 (May 12, 1980)

Absent reasons justifying continuance of the appeal as to a specific issue therein, the issue will be dismissed when resolved by settlement stipulation approved by the Alaska Native Claims Appeal Board.

Appeal of Northway Natives, Inc., 4 ANCAE 247 (June 2, 1980)

Appeals of Dct Lake Native Corp. and Doyon, Ltd., 4 ANCAE 318 (July 15, 1980)

Appeal of Northway Natives, Inc., 4 ANCAE 350 (July 30, 1980)

Where the Bureau of Land Management has issued a decision that a Native village has a dual ccre township, and the decision does not purport to convey lands but announces that action on the village selection applications will be taken in the future, an appeal from such decision on the grounds that the Bureau of Land Management failed to exclude certain third-party rights from the Native village selection is premature and will be denied.

State of Alaska, 5 ANCAE 118 (Dec. 1, 1980)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--ContinuedDismissal--Continued

Where one issue on appeal is that the Bureau of Land Management erred by excluding certain lands from conveyance without adjudicating the status of such lands, and the appellant and the Bureau of Land Management stipulate to withdrawal of the appeal on condition that the Bureau of Land Management will later adjudicate the status of such lands, then the issue is resolved and the Board will order partial dismissal of the appeal as to that issue.

Northway Natives, Inc., 5 ANCAB 123 (Dec. 12, 1980)
87 I.D. 603

Absent reasons justifying continuance of the appeal, the Board will dismiss a particular portion of an appeal when there remain in that portion no issues to be resolved by the Board.

Appeal of Nunapitchuk, Ltd., 5 ANCAB 139 (Dec. 18, 1980)

Intervention

Intervention in proceedings before the Alaska Native Claims Appeal Board is in the discretion of the Board. 43 CFR 4.909 (b).

The Board will not allow intervention following resolution of the issues on appeal.

The Board will not allow introduction of new issues to an appeal by an intervenor.

Northway Natives, Inc., 5 ANCAB 123 (Dec. 12, 1980)
87 I.D. 603

Jurisdiction

There is no administrative appeal process available to claimants under § 14(c) of ANCSA, and such claims must be brought in a judicial forum.

Appeals of John F. Thein, Kenneth E. Schoonover, /
Wendell Skaflestad, and Kollbjorn Skaflestad, 4 ANCAB
116 (Jan. 11, 1980) 87 I.D. 1

Contractual disputes between the appellant and other corporations are not appeals from findings of Departmental officials within the contemplation of jurisdictional regulations in 43 CFR 4.1(b) (5), nor can they be decided by this Board in connection with such appeals.

Appeal of Chickaloon Moose Creek Native Ass'n, Inc.,
4 ANCAB 134 (Feb. 8, 1980)

As an administrative adjudicative body organized to decide appeals under ANCSA, the Board finds all challenges to the validity of ANCSA beyond its jurisdiction.

Appeal of Theodore J. Almasy et al., 4 ANCAB 151
(Feb. 27, 1980) 87 I.D. 81

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--ContinuedJurisdiction--Continued

Interim conveyance and patent are documents of equal significance in the granting of title under ANCSA and its amendments, unless such amendments provide otherwise. Sec. 4(a) of P.L. 94-456 does not authorize the Secretary of the Interior to grant less than full legal title to Cook Inlet Region, Inc. Therefore, when BLM issues interim conveyance to Cook Inlet Region, Inc., pursuant to P.L. 94-456, the Secretary of the Interior and this Board lose jurisdiction of those interests in lands which have been conveyed and cannot maintain control over such lands pending reconveyance by Cook Inlet Region, Inc.

Contractual disputes between the appellant and other corporations are not appeals from findings of Departmental officials within the contemplation of jurisdictional regulations in 43 CFR 4.1(b) (5), nor can they be decided by this Board in connection with such appeals.

Appeal of Chickaloon Moose Creek Native Ass'n, Inc.,
4 ANCAB 250 (June 16, 1980) 87 I.D. 219

Where the State of Alaska has issued patent to a third party on lands tentatively approved to the State under the Alaska Statehood Act, the proper forum to adjudicate the status of such patent is a court, and the Department lacks administrative jurisdiction over the issue.

Appeal of Eyak Corp., 4 ANCAB 277 (June 30, 1980)
87 I.D. 279

Where a matter on appeal has been remanded to the Bureau of Land Management for a specific determination, the Board retains jurisdiction over the question of whether or not such a determination has been rendered moot by subsequent actions of the party.

Appeal of Faug-Vik, Inc., Ltd., 5 ANCAB 59 (Sept. 24, 1980)
87 I.D. 422

Remand

Where a matter on appeal has been remanded to the Bureau of Land Management for a specific determination, the Board retains jurisdiction over the question of whether or not such a determination has been rendered moot by subsequent actions of the party.

Appeal of Faug-Vik, Inc., Ltd., 5 ANCAB 59 (Sept. 24, 1980)
87 I.D. 422

Settlement Approval

43 CFR 4.913(b) provides:

Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary, or his delegate.

Appeal of Northway Natives, Inc., 4 ANCAB 350 (July 30, 1980)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--ContinuedSettlement Approval--Continued

Where the record is uncontested and supports a factual finding that the United States no longer uses or needs an improvement pursuant to the principles of Instructions, 44 L.D. 513 (1916), the Board can accept a stipulation by the parties to remove the reservation of interest from a conveyance document.

Doyon, Ltd., 5 AN CAB 77 (Oct. 10, 1980) 87 I.D. 480

Standing

Where an appellant does not include in a notice of appeal a claim of property interest in lands affected by the decision being appealed and a statement of the facts relied upon for standing, and such information is not filed within 30 days after filing the notice of appeal as required by regulations in 43 CFR 4.903, the appeal is subject to summary dismissal in the discretion of the Board.

Where an appellant fails to claim a property interest in land affected by the decision appealed, and further fails to file a statement of standing when specifically ordered to do so by this Board, the appeal will be summarily dismissed for failure to satisfy standing requirements in 43 CFR 4.903.

Appeal of Charles G. and Sara Hornberger, 4 AN CAB 112 (Jan. 9, 1980)

If the only interest in land claimed by appellants affected by the decision appealed was a terminated or relinquished special use permit, the appellants will be found to lack a property interest in land sufficient to confer standing under regulations in 43 CFR 4.902.

Appeals of John F. Thein, Kenneth E. Schoonover, Wendell Skaflestad, and Kolbjorn Skaflestad, 4 AN CAB 116 (Jan. 11, 1980) 87 I.D. 1

Where a party has not selected lands within the lands in dispute in an appeal, that party cannot be found to claim a property interest in such lands within the meaning of standing regulations in 43 CFR 4.902.

Appellant's claim that adjacent lands, which it has selected, will be impacted by conveyance to other villages of the lands here in dispute, is not grounds for a claim of property interest in the land selected by the other villages.

Appeal of Chickaloon Moose Creek Native Ass'n, Inc., 4 AN CAB 134 (Feb. 8, 1980)

Where land selections by a Cook Inlet village corporation pursuant to § 12(a) of ANCSA are rejected by the Bureau of Land Management so that such lands may be conveyed to Cook Inlet Regional Corp. which is obligated to reconvey lands to the village under the terms of an amendment to ANCSA, the village corporation's interest in its rejected land selection and in its ultimate right to reconveyance of land constitutes a property interest affected by a determination of the Bureau of Land Management, sufficient to confer standing under regulations contained in 43 CFR 4.902.

Appeal of Chickaloon Moose Creek Native Ass'n, Inc., 4 AN CAB 250 (June 16, 1980) 87 I.D. 219

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--ContinuedStanding--Continued

Where the Alaska Gateway School District claims only prospective ownership in lands and there is no evidence in the record that the School District has taken steps to obtain title pursuant to AS 14.08.151(b), the School District cannot be found to claim a property interest in such lands, within the meaning of 43 CFR 4.902, by reason of prospective ownership.

While a "property interest" sufficient to confer standing under 43 CFR 4.902 need not be a vested interest, it may not be completely speculative.

Alaska Gateway School District, 5 AN CAB 111 (Nov. 12 1980) 87 I.D. 560

CONVEYANCES

Interim Conveyance

Interim conveyance and patent are documents of equal significance in the granting of title under ANCSA and its amendments, unless such amendments provide otherwise. Sec. 4(a) of P.L. 94-456 does not authorize the Secretary of the Interior to grant less than full legal title to Cook Inlet Region, Inc. Therefore, when EIM issues interim conveyance to Cook Inlet Region, Inc., pursuant to P.L. 94-456, the Secretary of the Interior and this Board lose jurisdiction of those interests in lands which have been conveyed and cannot maintain control over such lands pending reconveyance by Cook Inlet Region, Inc.

Appeal of Chickaloon Moose Creek Native Ass'n, Inc., 4 AN CAB 250 (June 16, 1980) 87 I.D. 219

Reconveyances

Sec. 14(c) of ANCSA protects certain land uses based on occupancy alone, by requiring that village corporations receiving lands pursuant to ANCSA reconvey to the occupants those lands occupied for certain specified purposes.

Where the appellants' claimed right to use and occupancy of certain land is based on past use and occupancy of the land, such right might be protected by the reconveyance provisions of § 14(c) if the proposed conveyance were to a village corporation.

The Board lacks jurisdiction to decide an appeal based on interests claimed pursuant to § 14(c). There is no administrative appeal process available to claimants under § 14(c), and the only recourse is to a judicial forum.

Appeal of Theodore J. Almasy et al., 4 AN CAB 151 (Feb. 27, 1980) 87 I.D. 81

Where land selections by a Cook Inlet village corporation pursuant to § 12(a) of ANCSA are rejected by the Bureau of Land Management so that such lands may be conveyed to Cook Inlet Regional Corp. which is obligated to reconvey lands to the village under the terms of an amendment to ANCSA, the village corporation's interest in its rejected land selection and in its ultimate right to reconveyance of land constitutes a property interest affected by a determination of the Bureau of Land Management, sufficient to confer standing under regulations contained in 43 CFR 4.902.

Where the Secretary of the Interior and Cook Inlet Regional Corp. execute an agreement setting forth the procedure by which land shall be conveyed to the

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Reconveyances--Continued

regional corporation for reconveyance to villages within Cook Inlet Region, and such procedure is authorized by Congress in an amendment to ANCSA, the agreement is binding on the Bureau of Land Management and the ELM is required to convey lands to Cook Inlet Regional Corp. pursuant to the terms of the agreement.

When ELM rejects a village corporation's land selections for the purpose of conveying such lands to Cook Inlet Regional Corp. for reconveyance pursuant to § 4(a) of P.L. 94-456 and associated agreements, the rejection extinguishes the right of the village corporation to receive title from the Federal Government to those lands selected, but does not adjudicate or extinguish the right of the village corporation to receive title from Cook Inlet Region, Inc., to those lands.

The rights of a village corporation in the Cook Inlet Region to receive title from Cook Inlet Region, Inc., to lands for which it had applied pursuant to § 12(a) of ANCSA are determined by the terms of § 4(a) of P.L. 94-456 and associated agreements.

Appeal of Chickaloon Moose Creek Native Ass'n, Inc., 4 ANCAE 250 (June 16, 1980) 87 I.L. 219

Valid Existing RightsThird-Party Interests

Where Forest Service permits were terminated for apparent cause (failure to comply with permit conditions), the original holders of the permits no longer have property interests which constitute valid existing rights protected by § 14(g) of ANCSA.

Where the holder of a Forest Service permit requested that his special use permit be cancelled and the Forest Service did so and, subsequently, issued a special use permit for the same lot to another person, the original holder of the permit no longer has a property interest or a valid existing right derived from the permit which is protected under § 14(g) of ANCSA.

Appeals of John F. Thein, Kenneth E. Schoonover, Wendell Skaflestad, and Kolbjorn Skaflestad, 4 ANCAE 116 (Jan. 11, 1980) 87 I.L. 1

Valid existing rights which are protected under § 14(g) of the Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 688, as amended, 43 U.S.C. §§ 1601-1628 (1976 and Supp. I 1977), are in all cases derived from and created by the State or Federal Government.

Sec. 22(b) of ANCSA protects rights of use and occupancy pending patent of land upon which lawful entry was made prior to Aug. 31, 1971, for the purpose of gaining title to a homestead, headquarters site, trade and manufacturing site, or small tract site. Protection under § 22(b) is contingent upon compliance with the appropriate public land law.

Sec. 22(c) of ANCSA provides limited protection for unpatented mining claims, contingent upon compliance with the specified requirements.

Where the appellants have not asserted that they have a lease, contract, permit, right-of-way, or easement issued by the Federal Government or by the State of Alaska, they fail to prove entitlement to the protection provided by § 14(g) of ANCSA.

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing Rights--ContinuedThird-Party Interests--Continued

Where the appellants do not allege entry under, or compliance with, any public land laws, they cannot claim the protection of § 22(b).

Appeal of Theodore J. Almasz et al., 4 ANCAE 151 (Feb. 27, 1980) 87 I.L. 61

Where the State of Alaska has issued patent to a third party on lands tentatively approved to the State under the Alaska Statehood Act, the proper forum to adjudicate the status of such patent is a court, and the Department lacks administrative jurisdiction over the issue.

Contracts for the sale of real property, issued by the State of Alaska for lands in tentatively approved State land selections under the Statehood Act, are valid existing rights leading to the acquisition of title, protected by exclusion from conveyances to Native corporations under the Alaska Native Claims Settlement Act, as interpreted by Secretary's Order No. 3029 (43 FR 55287 (1978)).

In the case of unlisted villages a period occurred, after enactment of the Alaska Native Claims Settlement Act and before the villages filed for eligibility, in which tentatively approved land selections of the State of Alaska were not yet withdrawn for potential village selections, and during this period the State could still create third-party interests in such lands.

In the case of unlisted villages, third-party interests created by the State of Alaska on tentatively approved lands after enactment of the Alaska Native Claims Settlement Act are entitled to protection as valid existing rights provided such interests were created before the unlisted village applied for eligibility and lands were withdrawn for it.

Appeal of Eyak Corp., 4 ANCAE 277 (June 30, 1980) 87 I.L. 279

Lands tentatively approved for conveyance under the Alaska Statehood Act and leased by the State of Alaska pursuant to its open-to-entry lease program prior to enactment of the Alaska Native Claims Settlement Act must, pursuant to Secretary's Order No. 3029 (43 FR 55287 (1978)), be excluded from conveyance under ANCSA as valid existing rights leading to the acquisition of title.

The policy expressed in Secretary's Order No. 3029 is applicable to all lands still within the Department's jurisdiction, even if the decision to convey such lands pursuant to the Alaska Native Claims Settlement Act was issued by the Bureau of Land Management prior to publication of Order No. 3029.

Tentative approval of land selections by the State of Alaska under the Statehood Act was rescinded by the Bureau of Land Management to permit conveyance of the same lands to a Native corporation under the Alaska Native Claims Settlement Act. Subsequently, Secretary's Order No. 3029 found that third-party interests leading to fee title, created by the State in such lands, were valid existing rights which must be excluded from conveyance to the Native corporation. Accordingly, ELM must reinstate tentative approval of the State's selection of such lands so that the State

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedCONVEYANCES--ContinuedValid Existing Rights--ContinuedThird-Party Interests--Continued

is able to grant title to such third parties as contemplated by Order No. 3029.

Appeal of Bruce McAllister, 4 ANCAB 294 (June 30, 1980)
87 I.D. 286

Appeal of Nels Pilskog, 4 ANCAB 307 (July 8, 1980)

Appeal of Alan V. Hanson, 4 ANCAB 321 (July 24, 1980)

Appeal of C. E. Sharp, 4 ANCAB 328 (July 24, 1980)

Appeal of Raymond E. Koon, 4 ANCAB 335 (July 24, 1980)

Appeal of State of Alaska, 4 ANCAB 342 (July 24, 1980)

Where lands tentatively approved for conveyance under the Alaska Statehood Act were leased by the State of Alaska pursuant to its open-to-entry lease program prior to enactment of the Alaska Native Claims Settlement Act, such lands must, pursuant to Secretary's Order No. 3029 (43 FR 55287 (1978)), be excluded from conveyance under the Alaska Native Claims Settlement Act because the leases and concurrent purchase options are valid existing rights leading to the acquisition of title.

The policy expressed in Secretary's Order No. 3029 is applicable to all lands still within the Department's jurisdiction, even if the decision to convey such lands pursuant to the Alaska Native Claims Settlement Act was issued by the Bureau of Land Management prior to publication of Order No. 3029.

Where tentative approval of land selections by the State of Alaska under the Statehood Act was rescinded by the Bureau of Land Management to permit conveyance of the same lands to a Native corporation under the Alaska Native Claims Settlement Act, and subsequently Secretary's Order No. 3029 found that third-party interests leading to fee title, created by the State of Alaska in such lands, were valid existing rights which must be excluded from conveyance to the Native corporation, the Bureau of Land Management must reinstate tentative approval of the State of Alaska's selection of such lands so that the State of Alaska is able to grant title to such third parties as contemplated by Order No. 3029.

Appeal of State of Alaska, 5 ANCAB 4 (Aug. 20, 1980)
87 I.D. 366

Appeal of Daniel B. Winn, 5 ANCAB 19 (Aug. 25, 1980)
87 I.D. 372

Appeal of M. Walter Johnson et al., 5 ANCAB 32 (Aug. 25, 1980)

Appeal of Theodore A. Richards, 5 ANCAB 39 (Aug. 26, 1980)

Appeal of Judith P. Miller, 5 ANCAB 46 (Aug. 26, 1980)

DEFINITIONSFederal Installation

An agreement between selecting Native corporations and a Federal agency, on lands actually used by the Federal agency, cannot be enforced in lieu of a § 3(e) determination by the Bureau of Land Management to compel conveyance to the Native corporations in accord with the agreement. ANCSA by clear language in § 3(e)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedDEFINITIONS--ContinuedFederal Installation--Continued

mandates a Secretarial determination. While the Secretary may delegate, he may not be compelled to relinquish his statutory duty to third parties.

Where the required § 3(e) determination is crucial to conveyance, where the affected Federal agency and all affected Native corporations agree on the identification of lands actually used by the agency, where the record discloses no inconsistency between the agreement and § 3(e), where the determination has already been delayed for a significant period of time by the lack of implementing regulations and the date of publication of final regulations cannot be ascertained, the Bureau of Land Management may make a § 3(e) determination, relying on the parties' agreement for factual data, in the absence of final regulatory guidelines.

Appeal of Paug-Vik, Inc., Ltd., 5 ANCAB 59 (Sept. 24, 1980)
87 I.D. 422

Public LandsDepartment of the Interior Instructions,
44 L.D. 513 (1916)

Construction and maintenance of an authorized Federal improvement on public lands under principles of Department of the Interior Instructions, 44 I.D. 359 (1915) and 44 L.D. 513 (1916), does not cause an appropriation of land affected and thus does not affect the right of selection by a Native corporation under the provisions of ANCSA.

Inasmuch as the Federal interest in an improvement constructed and maintained on public land pursuant to Instructions, 44 L.D. 513 (1916), does not effect a segregation of, nor is it an interest in, the land itself, but is limited to the improvement, it cannot be considered as a possible exception to being "public land" within meaning of § 3(e) (1) of ANCSA.

Where the record is uncontested and supports a factual finding that the United States no longer uses or needs an improvement pursuant to the principles of Instructions, 44 L.D. 513 (1916), the Board can accept a stipulation by the parties to remove the reservation of interest from a conveyance document.

Dovon, Ltd., 5 ANCAB 77 (Oct. 10, 1980) 87 I.D. 480

Withdrawal for National Defense Purposes

The phrase "national defense purposes" is not a term of art and does not have a precise legal meaning, but is a broadly inclusive descriptive term.

Where neither the express language, nor the legislative history of ANCSA draws any distinction between withdrawals "for national defense purposes" and withdrawals for military reservations or other military uses, a withdrawal for use of the Department of the Army for terminal facilities in connection with a petroleum products pipeline system is considered to be a withdrawal "for national defense purposes" within the meaning of § 11(a) (1) of ANCSA.

In determining whether a national defense withdrawal, within the meaning of § 11(a) (1) of ANCSA, existed on Dec. 18, 1971, only the formal legal status of the withdrawal may be considered, and it is immaterial whether the purpose of the withdrawal has been fulfilled or whether the actual use to which the land is put has changed.

ANCSA does not give the Secretary of the Interior the authority to make factual determinations as to the

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedDEFINITIONS--ContinuedWithdrawal for National Defense Purposes--Continued

actual use of land which is withdrawn for national defense purposes, resulting in removal of such land from the protection of the exception for national defense purpose withdrawals in § 11(a)(1) of ANCSA.

Appeal of Tanacross, Inc., 4 ANCAE 173 (Apr. 7, 1980)
87 I.D. 123

Appeal of Northway Natives, Inc., 4 ANCAE 207 (Apr. 21, 1980)

Lands affected by construction and maintenance of a linear pipeline under principles of Instructions, 44 L.D. 513 (1916), are not "lands withdrawn or reserved for national defense purposes" within the meaning of the exception in § 11(a)(1) of ANCSA.

Doyon, Ltd., 5 ANCAE 77 (Oct. 10, 1980) 87 I.D. 480

NAVIGABLE WATERS

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

Appeal of Bristol Bay Native Corp., 4 ANCAE 355 (July 31, 1980) 87 I.D. 341

Appeal of Nunapitchuk, Ltd., 5 ANCAE 139 (Dec. 18, 1980)

WITHDRAWALS AND RESERVATIONSWithdrawals for Native SelectionGenerally

A Native village corporation has no interest in lands included in a townsite prior to the enactment of the Alaska Native Claims Settlement Act, as the lands were segregated prior to this date so that ANCSA did not withdraw the lands for selection by the corporation. Accordingly, the rights of settlers and of the municipality which derive from an entitlement created prior to the Alaska Native Claims Settlement Act, are superior to the corporation's rights.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

State-Selected Lands

In the case of unlisted villages a period occurred, after enactment of the Alaska Native Claims Settlement Act and before the villages filed for eligibility, in which tentatively approved land selections of the State of Alaska were not yet withdrawn for potential village selections, and during this period the State could still create third-party interests in such lands.

In the case of unlisted villages, third-party interests created by the State of Alaska on tentatively approved lands after enactment of the Alaska Native Claims Settlement Act are entitled to protection as

ALASKA NATIVE CLAIMS SETTLEMENT ACT--ContinuedWITHDRAWALS AND RESERVATIONS--ContinuedWithdrawals for Native Selection--ContinuedState-Selected Lands--Continued

valid existing rights provided such interests were created before the unlisted village applied for eligibility and lands were withdrawn for it.

Appeal of Eyak Corp., 4 ANCAE 277 (June 30, 1980)
87 I.D. 279

APPEALS

(See also Administrative Procedure, Contracts, Grazing Permits & Licenses, Indian Probate, Indian Tribes, Rules of Practice, Torts, Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970--if included in this Index.)

The right of appeal is limited to a party to a case adversely affected by a decision of the Bureau of Land Management, and an appeal from a timber sale notice will be remanded to the Bureau of Land Management for treatment as a protest. However, under the circumstances presented here, where the Bureau of Land Management has reviewed the protestant's reasons and, in effect, has made its decision communicating it to the protestant and this Board, no purpose would be served by remanding the case and the Board will consider the matter on its merits.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal which is limited to these issues must be dismissed.

Texas Oil & Gas Corp., 46 IBLA 50 (Feb. 20, 1980)

Timely filing of a notice of appeal with the Board of Land Appeals is jurisdictional. If appeal from a decision of a Bureau of Land Management official is untimely, the Board does not have jurisdiction to consider it and that official must close the case pursuant to 43 CFR 4.411(b). When an appeal is properly filed, the ELM official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over it is restored by Board action disposing of the appeal. Where ELM closes a case because appeal was untimely when in fact it was timely, the Board's jurisdiction will have been triggered at the time of filing of the notice of appeal. ELM's action in closing the case is a nullity and does not affect the appellant's rights before the Board.

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to ELM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of ELM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it

APPEALS--Continued

will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, if all else be regular.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular.

State of Alaska v. Elsie John, 46 IBLA 137 (Mar. 19, 1980)

State of Alaska v. Daniel Jimmie, Bertha A. Williams, 48 IBLA 370 (July 11, 1980)

State of Alaska v. Cora John Smith, 50 IBLA 6 (Sept. 5, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notification to the State, it has an election. The State may initiate a private contest proceeding during the time prescribed to prove lack of qualification of the Native, or the State may await final decision from BLM and then appeal to this Board.

State of Alaska v. Dora David and Cathy Dick, 46 IBLA 177 (Mar. 21, 1980)

When an appeal is properly filed with the Board of Land Appeals from a decision made by an official of the Bureau of Land Management, that official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over the case is restored by Board action disposing of the appeal.

James T. Brown, 46 IBLA 265 (Mar. 27, 1980)

APPEALS--Continued

When there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, ELM must notify the State that, if dissatisfied, it has an election of remedies. The State may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Joan M. Newhall, 47 IBLA 85 (Apr. 21, 1980)

The effect of a timely filed notice of appeal is to suspend the authority of the deciding official to exercise jurisdiction relating to the subject of the appeal. It does not have the effect, however, of suspending the authority of BLM to act on matters which, while related to the subject of the appeal, are nevertheless functionally independent therefrom.

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaskan Native for allotment under the Act of May 17, 1906, and it appears to ELM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of ELM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Moses Chythlook, 47 IBLA 249 (May 13, 1980)

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey or the Bureau of Land Management to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Pass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to ELM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of ELM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it

APPEALS--Continued

will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, if all else be regular.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska, 48 IBLA 229 (June 17, 1980)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

In order to constitute a notice of appeal a document must state in an objectively ascertainable manner a present intent to appeal a final decision of the Bureau of Land Management. A petition for reconsideration of a decision with reasons directed to the office which issued the decision that expresses a conditional intent to file an appeal in the future if the relief requested by petitioner is not granted does not constitute notice of appeal. Where the decision is reconsidered in response to the petition and the petitioner is notified that the decision is reaffirmed with right of appeal, the decision will become final in the absence of a timely appeal.

Ilean Landis, 49 IBLA 59 (July 21, 1980)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Where appellant's allegations on appeal are immaterial and irrelevant and appellant fails to establish any error in the decision below or any infringement of appellant's rights, the appeal is properly dismissed as lacking in merit.

Margaret Wallace, 49 IBLA 256 (Aug. 18, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order, which temporarily suspended oil and gas leasing, and was issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department. An appeal which is limited to those issues must be dismissed.

William E. Jeffers, Jr., William E. Jeffers, 49 IBLA 264 (Aug. 18, 1980)

Where Geological Survey has not yet taken any adverse action on a coal lessee's request under 43 CFR 3473.3-2(d) to reduce royalty due on a coal lease, it is premature for the Board of Land Appeals to consider whether such reduction is appropriate. Rather, the lessee must wait for GS to take action and then, if it is adverse, it may pursue its appeal through normal procedures.

Garland Coal & Mining Co., 49 IBLA 400 (Sept. 5, 1980)

APPEALS--Continued

Under 43 CFR 4.402 and 4.412, an appeal to the Board will be subject to summary dismissal by the Board if a statement of reasons for the appeal is not included in the notice of appeal and is not filed within 30 days after the notice of appeal was filed.

E. M. Hart, 50 IBLA 138 (Sept. 26, 1980)

Where an individual is named as an "adverse party" in a BLM decision which is favorable to that person, who then is duly served with copies of a notice of appeal and statement of reasons challenging the validity of BLM's decision before the Board of Land Appeals and seeking reversal of that decision, but decides not to participate in the appellate proceedings before the Board, the matter becomes res judicata upon the rendering of the Board's decision, and the party may not subsequently challenge this decision by filing a new appeal of his own before the Board for readjudication of the same matter.

Donald W. Cover, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of a policy directive issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal limited to those issues must be dismissed.

James R. Learned et al., 50 IBLA 416 (Oct. 24, 1980)

APPLICATIONS AND ENTRIES

GENERALLY

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing will be denied as well as his request for further suspension of the case.

Jack Zuckerman, 45 IBLA 337 (Feb. 7, 1980)

A permit allowing free use of mineral materials does not segregate the subject lands from further appropriation; rather, subsequent claims and entries are subject to the terms of the permit.

It is well established that an entry on public land under the laws of the United States segregates the land from the public domain, appropriates it to private use, and withdraws it from subsequent entry or acquisition until that entry is finally cancelled. Applications for interest in public lands must be rejected if the lands are not available for the requested disposition at the time they are filed or considered. Where a right-of-way was granted to lands subject at the time to a valid homestead entry, BLM properly declares the grant null and void ab initio.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

The BLM may not summarily reject a mineral patent application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

Big Horn Limestone Co., 46 IBLA 98 (Feb. 28, 1980)

The rejection of an application for a lease under the Recreation and Public Purposes Act for land to be used as a rifle range is a proper exercise of the Secretary's discretion where the facts show that size and topography of the land are not suitable for such range and the site is not safe, notwithstanding the fact that the land had been classified for lease under the Recreation and Public Purposes Act.

Town of Kremmling, 46 IBLA 213 (Mar. 27, 1980)

Having determined that the lands in question were withdrawn for national defense purposes during the selection period, BLM was required to reject appellant's selection application for such lands pursuant to regulations in 43 CFR 2091.1.

Appeal of Tanacross, Inc., 4 ANCAB 173 (Apr. 7, 1980)
87 I.E. 123

Appeal of Northway Natives, Inc., 4 ANCAB 207 (Apr. 21, 1980)

Where Native allotment applicants who were 8 years and older at the date land was segregated from entry assert independent use and occupancy of the land then, the Bureau of Land Management should contest their applications, affording them notice and an opportunity for a hearing to prove the adequacy and independence of their use and occupancy, rather than reject the applications without a hearing simply because of the applicant's age on the segregative date.

William Bouwens et al., 46 IBLA 366 (Apr. 8, 1980)

An application for permit to drill for oil and gas in a "potash enclave" in a designated "Potash Area" is properly denied where the applicant fails to show that its application comes within either of the two exceptions to the policy in favor of potash development enunciated in an order of the Secretary dated Oct. 7, 1975, 40 FR 51486 (Nov. 5, 1975).

Bass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

An application for an Indian allotment, filed on behalf of a minor child, pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) and (d), is properly rejected.

Geneiva Nell Maston Smith et al., 48 IBLA 199 (June 16, 1980)

Nolia Fern Ricker, Clyde Lloyd Atwater, 48 IBLA 373 (July 11, 1980)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

An application for an Indian allotment, filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) and (d) or the petition for classification required by 43 CFR 2531.2 may be rejected.

Don Stokes et al., 48 IBLA 365 (July 11, 1980)

Tammy Lou Ricker Smith et al., 49 IBLA 251 (Aug. 16, 1980)

An application for millsite patent which does not comply with the clear and unequivocal requirements of the regulations in 43 CFR Part 3860 relating to mill-sites must be rejected.

Morrill A. Nielson, 48 IBLA 398 (July 11, 1980)

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Service Company, a leasing service, and issuance of the lease, shall be suspended pending appropriate action by ELM to determine whether there has been a violation of the regulations requiring disclosure of interests in a lease, when an offer is filed, and prohibiting against the multiple filings of lease offers in a simultaneous filing, arising from the RSC's client referral program whereby client A, for whom RSC files offers, can share in the proceeds of RSC's commission on a sale of client B's oil and gas lease negotiated by RSC if client B was referred to RSC by client A.

Lloyd Chemical Sales, Inc., 49 IBLA 392 (Sept. 5, 1980)

Where a prospecting permit applicant is required to furnish evidence of its qualifications to hold the permit, proper reference to its corporate qualifications statement on file in any Bureau of Land Management office fully satisfies the requirements of 43 CFR 3502.1-3.

Leon F. Scully, Jr., Eileen Scully, 50 IBLA 19 (Sept. 9, 1980)

To establish the mineral character of lands, it must be shown that the known conditions are such as to engender the belief that the lands contain mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end. The mineral character of land may be established by inference without the exposure of the mineral deposit for which the land is supposed to be valuable. Lands containing mineral of such quantity and value as to warrant a prudent man in the expenditure of his time and money with a reasonable expectation of developing a paying mine are disposable only under the mining laws.

Edith Szmyd, Evelyn Roth, 50 IBLA 61 (Sept. 15, 1980)

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

Allied Materials Corp., 50 IBLA 353 (Oct. 16, 1980)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Where it appears that there may have been a violation of the disclosure and/or interest regulations (43 CFR 3102.7 and 3112.5-2) asserted by a protest, the adjudication of the appeal stemming from the dismissal of the protest is properly suspended pending appropriate action by BLM to determine whether there has been a violation of those regulations.

Geosearch, Inc., 50 IBLA 409 (Oct. 24, 1980)

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Service Company, a leasing service, and issuance of the lease, properly is suspended pending appropriate action by BLM to determine whether there has been a violation of the disclosure and interest regulations. BLM will investigate a filing service's relationship with the offeror where it appears that the disclosure and interest regulations may have been violated by a referral program offered by the filing service.

Geosearch, Inc., 51 IBLA 59 (Oct. 31, 1980)

Applications for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1 are properly rejected.

Applications for Indian allotment on the public domain filed pursuant to sec. 4 of the General Allotment Act, as amended 25 U.S.C. § 334 (1976), which are not accompanied by the petition for classification required by 43 CFR 2531.2 are properly rejected.

Robert Dale Marston et al., 51 IBLA 115 (Nov. 20, 1980)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

AMENDMENTS

The Bureau of Land Management has no authority to correct an error in a description of land sought under a geothermal lease application. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section.

Diane B. Katz, 47 IBLA 1 (Apr. 10, 1980)

APPLICATIONS AND ENTRIES--Continued

AMENDMENTS--Continued

Where lands sought in a Native allotment application are described by metes and bounds despite their having been previously surveyed, and thereafter an amended application is filed subsequent to Dec. 18, 1971, seeking lands in a different township, the amended application is properly rejected as untimely.

Edith Szyzd, Beulah Hoth, 50 IBLA 61 (Sept. 15, 1980)

FILING

Where a State Office rejects a Native allotment application because it was not timely filed and did not have the required certification and land description, and where it is shown such deficiencies were beyond applicant's control, the case will be remanded to the State Office to allow 60 days for the deficiencies to be cured, and for the State Office, if it finds substantial compliance with the law, to apply doctrine of equitable adjudication and then to accept the application with the late filing, proper certification, and amended land description, all else being regular.

Herbert Herrmann, 45 IBLA 43 (Jan. 14, 1980)

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

Allied Materials Corp., 50 IBLA 353 (Oct. 16, 1980)

BLM properly applied amended regulations, the effective date for which is June 16, 1980, to a drawing of simultaneous noncompetitive lease offers held in July 1980.

Under 43 CFR 3112.2-2(h) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to cover the \$10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

An applicant is required to submit a filing fee for every ostensible application whether or not it is completed as required under the regulations. Thus, a failure to remit enough money to cover all of the fees due for a group of filings is not excused because one of the filings may not have been properly completed.

Federal Energy Corp., 51 IBLA 144 (Nov. 24, 1980)

PRIORITY

Where, under 43 CFR 3502.7, evidence of qualifications to hold a prospecting permit must be submitted simultaneously with other application materials and such evidence is not submitted with the application, the application is deficient, the filing is ineffective, and no priority attaches. However, where an applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3502.7 is satisfied, an effective filing occurs, and priority attaches on the date of the cure.

Leon F. Scully, Jr., Eileen Scully, 50 IBLA 19 (Sept. 9, 1980)

APPLICATIONS AND ENTRIES--ContinuedRELINQUISHMENT

In order for an heir to relinquish an allotment application, he or she must be the sole heir or have the authority to act on behalf of all heirs. Where, as in this case, the widow of a Native allotment applicant, who is not the sole heir, acting on her own behalf relinquishes his application and refiles for the same allotment; the relinquishment is ineffective.

Upon the death of a Native allotment applicant, BIA may file evidence of use and occupancy for the benefit of the applicant's heirs so long as the applicant has fulfilled all other requirements for allotment. However, BIA has no authority to relinquish the applicant's allotment during the period for filing evidence of use and occupancy.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IBIA 165 (Mar. 21, 1980)

VALID EXISTING RIGHTS

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1973, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations amended in 1976 with retroactive effect. However, where the application is summarily rejected solely for the reason that the applicant's supplemental submission is "inadequate," without identifying the deficiency, the decision will be vacated and the case remanded for readjudication.

Kin-Ark Corp., 45 IBIA 159 (Jan. 23, 1980) 87 I.D. 14

APPRAISALS

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, an appraisal will be sustained in the absence of an offer of specific substantial evidence that it is incorrect.

Pacific Power & Light Co., 45 IBIA 127 (Jan. 23, 1980)

Appraisals of rights-of-way for communication sites will be upheld where an appellant fails to demonstrate by convincing evidence that the appraisal methods used by the Bureau of Land Management are in error or that the charges are excessive.

Pursuant to 43 CFR 2802.1-7(3) increased charges may not be imposed retroactively, but are only to be imposed by the authorized officer after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

A grantee of a communications site right-of-way is properly held in default and his right-of-way is properly cancelled pursuant to 43 CFR 2802.1-7(d) where grantee has failed to pay proper amount of rental for 4 years.

James W. Smith, 46 IBIA 233 (Mar. 27, 1980)

Where BLM purportedly has appraised the property on which appellant allegedly has an occupancy lease issued pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), and appellant submits evidence which raises a question as to whether the correct property was appraised, supported by a statement from an independent real estate appraiser, and presents other data which challenges the validity of the appraisal, the State Office decision will be

APPRAISALS--Continued

vacated and the case remanded to BLM for consideration of whether a new appraisal is warranted.

James T. Brown, 46 IBIA 265 (Mar. 27, 1980)

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Hyatt Lake Homeowners Ass'n, 48 IBIA 159 (June 9, 1980)

The comparable lease method of appraisal of communication sites, which compares rental data from comparable leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

E & M Service, Inc., 48 IBIA 233 (June 17, 1980)

The comparable lease method of appraisal of communication sites, which compares rental data from comparable leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

The relevant regulation, 43 CFR 2802.1-7(d), does not absolutely prohibit acceptance of partial payments of past due rentals in all circumstances.

Northwestern Colorado Broadcasting Co., 49 IBIA 23 (July 15, 1980)

AUTHORITY TO BIND GOVERNMENT

The United States may not be bound by its officers when they enter into an agreement to do or cause to be done what the law does not sanction or permit.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IBIA 165 (Mar. 21, 1980)

BOARD OF LAND APPEALS

As precedents, decisions of the Board of Land Appeals should be cited by the volume and page number given on the bottom of the page of the decision and not to the IBIA docket number shown on the top of the decision.

Decisions of the Interior Board of Land Appeals are indexed, digested, and available for public inspection pursuant to published Departmental regulations.

BOARD OF LAND APPEALS--Continued

They meet the requirements of the Administrative Procedure Act and serve as binding Departmental precedents. However, adjudicative decisions by local Bureau of Land Management offices do not meet requirements of the Administrative Procedure Act and are not binding precedents.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980)
87 I.D. 110

As the Department's final review authority on decisions relating to the public lands, the Board of Land Appeals exercises all the powers which the Department would have in making an initial decision.

Frederick H. Larson v. State of Utah, 50 IBLA 382
(Oct. 22, 1980)

BUREAU OF INDIAN AFFAIRS

(See also Indian Probate--if included in this Index.)

ADMINISTRATIVE APPEALSActs of Agents of the United States

Where review is sought of action by BIA officials disbursing IIM account funds pursuant to agency regulation, their handling of the disbursements is reviewable by the BIA under 25 CFR 2.3.

Clarence Runs After v. Aberdeen Area Director, Bureau of Indian Affairs, and Cheyenne River Sioux Tribe, 8 IBLA 170 (Oct. 27, 1980) 87 I.D. 501

BUREAU OF LAND MANAGEMENT

(See also Mineral Leasing Act--if included in this Index.)

Decisions of the Interior Board of Land Appeals are indexed, digested, and available for public inspection pursuant to published Departmental regulations. They meet the requirements of the Administrative Procedure Act and serve as binding Departmental precedents. However, adjudicative decisions by local Bureau of Land Management offices do not meet requirements of the Administrative Procedure Act and are not binding precedents.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980)
87 I.D. 110

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

CLASSIFICATION AND MULTIPLE USE ACT OF 1964

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice, and applications for such land must be rejected.

Robert Dale Marston et al., 51 IBLA 115 (Nov. 20, 1980)

COAL LEASES AND PERMITS

(See also Mineral Leasing Act--if included in this Index.)

GENERALLY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency, § 92, the United States Army Corps of Engineers, having jurisdiction of acquired land described in a lease offer be obtained prior to the issuance of an acquired lands lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Jacobs Contracting Corp., 45 IBLA 40 (Jan. 14, 1980)

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1973, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations amended in 1976 with retroactive effect. However, where the application is summarily rejected solely for the reason that the applicant's supplemental submission is "inadequate," without identifying the deficiency, the decision will be vacated and the case remanded for readjudication.

Kin-Ark Corp., 45 IBLA 159 (Jan. 23, 1980) 87 I.D. 14

Where an applicant for preference right coal leases fails to present information sufficient to show that there is coal in commercial quantities on the areas for which he holds prospecting permits as required by 43 CFR 3430.1, and where he does not submit specific information showing the quantity and quality of the coal deposits in these areas, as required by 43 CFR 3430.2, his applications are properly rejected.

H. N. Cunningham, 47 IBLA 193 (May 7, 1980)

APPLICATIONS

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency, § 92, the United States Army Corps of Engineers, having jurisdiction of acquired land described in a lease offer be obtained prior to the issuance of an acquired lands lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Jacobs Contracting Corp., 45 IBLA 40 (Jan. 14, 1980)

Where BLM has rejected an application for a competitive coal lease in accordance with a court injunction and thereafter said injunction expires, BLM shall reconsider appellant's application and apply thereto.

COAL LEASES AND PERMITS--Continued

APPLICATIONS--Continued

newly promulgated regulations set forth at 43 CFR Part 3400.

Shell Oil Co., 47 IBLA 4 (Apr. 10, 1980)

LEASES

Where BLM has rejected an application for a competitive coal lease in accordance with a court injunction and thereafter said injunction expires, BLM shall reconsider appellant's application and apply thereto newly promulgated regulations set forth at 43 CFR Part 3400.

Shell Oil Co., 47 IBLA 4 (Apr. 10, 1980)

Where an applicant for preference right coal leases fails to present information sufficient to show that there is coal in commercial quantities on the areas for which he holds prospecting permits as required by 43 CFR 3430.1, and where he does not submit specific information showing the quantity and quality of the coal deposits in these areas, as required by 43 CFR 3430.2, his applications are properly rejected.

H. N. Cunningham, 47 IBLA 193 (May 7, 1980)

Under 43 CFR 3451.1(a) (2) and 3473.3-2, BLM is required during readjustment of coal leases to impose a minimum royalty of 12-1/2 percent as a term of all leases subject to readjustment. Once the rate is imposed, the lessee may seek its reduction by application for relief to the Geological Survey under 43 CFR 3473.3-2(d).

Where Geological Survey has not yet taken any adverse action on a coal lessee's request under 43 CFR 3473.3-2(d) to reduce royalty due on a coal lease, it is premature for the Board of Land Appeals to consider whether such reduction is appropriate. Rather, the lessee must wait for GS to take action and then, if it is adverse, it may pursue its appeal through normal procedures.

Garland Coal & Mining Co., 49 IBLA 400 (Sept. 5, 1980)

In the context of a readjustment of the terms of a coal lease under the Mineral Leasing Act, the Bureau of Land Management erred in rejecting a lessee's attempts to negotiate the new proposed terms of a lease ripe for readjustment under the provisions of the Act solely on the ground that the lessee's objections to the proposed terms were received 3 days after the regulatory deadline.

United States Steel Corp., 50 IBLA 252 (Sept. 30, 1980)

ROYALTIES

Under 43 CFR 3451.1(a) (2) and 3473.3-2, BLM is required during readjustment of coal leases to impose a minimum royalty of 12-1/2 percent as a term of all leases subject to readjustment. Once the rate is imposed, the lessee may seek its reduction by application for relief to the Geological Survey under 43 CFR 3473.3-2(d).

Where Geological Survey has not yet taken any adverse action on a coal lessee's request under 43 CFR 3473.3-2(d) to reduce royalty due on a coal lease, it is premature for the Board of Land Appeals to consider whether such reduction is appropriate. Rather, the lessee must wait for GS to take action and then, if it

COAL LEASES AND PERMITS--Continued

ROYALTIES--Continued

is adverse, it may pursue its appeal through normal procedures.

Garland Coal & Mining Co., 49 IBLA 400 (Sept. 5, 1980)

COLOR OR CLAIM OF TITLE

GENERALLY

Where a hearing is held to allow an applicant to introduce extrinsic evidence in a color-of-title proceeding to make definite a description in a quitclaim deed which is ambiguous as to what lands are conveyed, and the applicant does not succeed in providing clear and convincing evidence that the deed did convey color of title or that the grantee had any reasonable basis to believe he was obtaining good title to the applied for land, the application is properly rejected.

Mary C. Pemberton, 47 IBLA 373 (May 21, 1980)

ADVERSE POSSESSION

Prescriptive rights cannot be obtained against the Federal Government. Except as provided by the Color of Title Act, 45 Stat. 1069, as amended, 43 U.S.C. § 1068-1068h (1976), no adverse possession of Government property can affect the title of the United States.

The Color of Title Act requires that the claimant have held the subject tract of public land in good faith and in peaceful, adverse possession under claim or color of title for more than 20 years.

Under the Color of Title Act, color or claim of title must be based upon a document from a source other than the United States which purports to convey to the applicant the land for which application is made. Possession and improvement of public land by a color of title applicant in the mistaken belief that he owns it is not sufficient basis for conveying title under the Color of Title Act.

Where appellants have not alleged facts bringing their claims within the Color of Title Act, they are not entitled to land under that statute.

Exclusive possession is required for the possession to be adverse.

Appeal of Theodore J. Almasv et al., 4 ANCAP 151 (Feb. 27, 1980) 87 I.L. 81

DESCRIPTION OF LAND

Where a hearing is held to allow an applicant to introduce extrinsic evidence in a color-of-title proceeding to make definite a description in a quitclaim deed which is ambiguous as to what lands are conveyed, and the applicant does not succeed in providing clear and convincing evidence that the deed did convey color of title or that the grantee had any reasonable basis to believe he was obtaining good title to the applied for land, the application is properly rejected.

Mary C. Pemberton, 47 IBLA 373 (May 21, 1980)

COLOR OR CLAIM OF TITLE--Continued

GOOD FAITH

Good faith under the Color of Title Act requires that the claimant possess the land without knowing or having reason to know that title to the land was vested in the United States.

Appeal of Theodore J. Almasy et al., 4 ANCAP 151
(Feb. 27, 1980) 87 I.D. 81

Where a hearing is held to allow an applicant to introduce extrinsic evidence in a color-of-title proceeding to make definite a description in a quitclaim deed which is ambiguous as to what lands are conveyed, and the applicant does not succeed in providing clear and convincing evidence that the deed did convey color of title or that the grantee had any reasonable basis to believe he was obtaining good title to the applied for land, the application is properly rejected.

Mary C. Pemberton, 47 IBLA 373 (May 21, 1980)

COMMUNICATION SITES

Appraisals of rights-of-way for communication sites will be upheld where an appellant fails to demonstrate by convincing evidence that the appraisal methods used by the Bureau of Land Management are in error or that the charges are excessive.

Pursuant to 43 CFR 2802.1-7(3) increased charges may not be imposed retroactively, but are only to be imposed by the authorized officer after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

James W. Smith, 46 IBLA 233 (Mar. 27, 1980)

"Fair market value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of communication sites, which compares rental data from comparable leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

B. & M. Service, Inc., 48 IBLA 233 (June 17, 1980)

"Fair market value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to

COMMUNICATION SITES--Continued

grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of communication sites, which compares rental data from comparable leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

The relevant regulation, 43 CFR 2802.1-7(d), does not absolutely prohibit acceptance of partial payments of past due rentals in all circumstances.

Northwestern Colorado Broadcasting Co., 49 IBLA 23
(July 15, 1980)

CONFIDENTIAL INFORMATION

(See also Administrative Procedure: Public Information, Public Records--if included in this Index.)

"Proprietary information." Proprietary information means information which, if disclosed, would do substantial harm to the competitive position of the outside source from which it was obtained and would inhibit the Government's ability to obtain this type of information in the future resulting in a substantial detrimental effect on a Government program. Internally generated Governmental decisions and information are not proprietary.

Southern Union Exploration Co., 51 IBLA 89 (Nov. 5, 1980)

CONSTITUTIONAL LAW

GENERALLY

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Alice E. Deetz, 48 IBLA 59 (May 29, 1980)

The Department of the Interior, as an agency of the executive branch of Government, is not the proper forum to decide whether or not the recordation of mining claims provisions of the Mining in the Parks Act, 90 Stat. 1342, 16 U.S.C. § 1907 (1976), are constitutional.

Elden A. LeRoy, Dorothy A. LeRoy, 49 IBLA 320 (Aug. 20, 1980)

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Abner Weed, 50 IBLA 141 (Sept. 26, 1980)

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

The Interior Board of Surface Mining and Reclamation Appeals is not the proper forum to consider the constitutionality of regulations promulgated by the Secretary.

Aranda Coal Co., 2 IBMA 395 (Dec. 22, 1980) 87 I.L. 643

DUE PROCESS

Timely appeal to the Board of Land Appeals suspends the effect of a Bureau of Land Management decision pending outcome of the appeal. Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Alva F. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Max Weiss, 49 IELA 332 (Aug. 25, 1980)

George H. Fennimore et al., 50 IBLA 280 (Oct. 6, 1980)

Due process consists of notice and an opportunity for hearing. Although the contestee in a Government contest proceeding under the Administrative Procedure Act has a right to be represented by counsel, due process does not require that the Department of the Interior hold a second hearing because appellant did not avail himself of that right at the first hearing.

United States v. Jack McLean, 50 IBLA 290 (Oct. 7, 1980)

CONTESTS AND PROTESTS

(See also Administrative Procedure, Rules of Practice--if included in this Index.)

GENERALLY

Where BLM classifies a 4-acre tract as suitable for disposal under the Small Tract Act, thereby segregating it from acquisition under other public land laws, then grants an individual a lease thereon with option to purchase, pursuant to which the lessee constructs buildings and occupies the tract, the protest and application of an Alaska Native, made for the first time 12 years later, will be rejected, as a matter of law and equity where the Native was claiming 160 acres of different land during the preceding 6 years, and had made no assertion of interest in the small tract, but rather had expressly acknowledged the existence of the leasehold.

Evelyn Alexander, 45 IBLA 28 (Jan. 14, 1980)

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

The right of appeal is limited to a party to a case adversely affected by a decision of the Bureau of Land Management, and an appeal from a timber sale notice will be remanded to the Bureau of Land Management for treatment as a protest. However, under the circumstances presented here, where the Bureau of Land Management has reviewed the protestant's reasons and, in effect, has made its decision communicating it to the protestant and this Board, no purpose would be served by remanding the case and the Board will consider the matter on its merits.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to ELM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of ELM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, if all else be regular.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

State of Alaska, 48 IELA 229 (June 17, 1980)

Where a Government contest complaint against a mining claim contains charges which, if proved, would render the claim invalid, and the contestee fails to file an answer to the complaint in accordance with Departmental regulations, the allegations of the complaint will be taken as admitted by the contestee, and the claim is properly declared null and void. The Secretary is without authority to waive the regulations to permit the late filing of an answer.

United States v. Dan Seelinger, 46 IELA 76 (Feb. 22, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to ELM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular.

State of Alaska v. Elsie John, 46 IBLA 137 (Mar. 19, 1980)

State of Alaska v. Daniel Jimmie, Bertha A. Williams, 48 IBLA 370 (July 11, 1980)

State of Alaska v. Cora John Smith, 50 IBLA 6 (Sept. 5, 1980)

Where Bureau of Land Management determines that an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IBLA 165 (Mar. 21, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notification to the State, it has an election. The State may initiate a private contest proceeding during the time prescribed to prove lack of qualification of the Native, or the State may await final decision from BLM and then appeal to this Board.

State of Alaska v. Dora David and Cathy Dick, 46 IBLA 177 (Mar. 21, 1980)

A Native allotment applicant who is a minor is not precluded from establishing use and occupancy of the land applied for. However, such use and occupancy must be achieved as an independent citizen in his own right and must be potentially exclusive. The question of a 14-year old's independent use and occupancy is best addressed at a contest proceeding.

Eleanor H. Wood, 46 IBLA 373 (Apr. 8, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaskan Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Joan M. Newhall, 47 IBLA 85 (Apr. 21, 1980)

State of Alaska v. Moses Chythlook, 47 IBLA 249 (May 13, 1980)

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing.

United States v. William R. Soren, 47 IBLA 226 (May 13, 1980)

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Evan Chukwak, 47 IBLA 241 (May 13, 1980)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

The assertion that annual assessment work has not been performed is the assertion of a negative fact. If an examination of the mining claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence to this effect would be sufficient to establish a prima facie case. It would then devolve upon the claimant to show by a preponderance of the countervailing evidence that he has substantially complied with the statute.

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

Where the Government contests the validity of a mining claim for nonperformance of annual assessment work, there is nothing inherent or implied in that action which requires a conclusion that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the Government that "property rights in the claim have been established by the making of a valid location."

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aidaelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.L. 248

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The fact that such contest challenges the validity of certain mining claims and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack

CONTESTS AND PROTESTS--ContinuedGENERALLY--Continued

of discovery of a valuable mineral deposit upon the claims.

United States v. R. H. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

The procedure followed by the Department of the Interior in the initiation of mining contest cases is in compliance with the due process clause of the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 551 (1976).

United States v. Mary E. Gray, 50 IBLA 209 (Sept. 30, 1980)

Due process consists of notice and an opportunity for hearing. Although the contestee in a Government contest proceeding under the Administrative Procedure Act has a right to be represented by counsel, due process does not require that the Department of the Interior hold a second hearing because appellant did not avail himself of that right at the first hearing.

United States v. Jack McLean, 50 IBLA 290 (Oct. 7, 1980)

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

CONTRACTS

(See also Appeals, Claims Against the United States, Delegation of Authority, Labor, Rules of Practice--if included in this Index.)

CONSTRUCTION AND OPERATIONGenerally

Where a cost-plus-fixed-fee contractor has signed a contract amendment accepting the auditor's recommended overhead rates and no proof is offered to support claims for other disallowed costs, the Board finds there was a binding agreement on overhead rates and a failure to prove appellant's claims for other costs.

Appeal of National Institute for Community Development, Inc., IBCA-1185-3-78 (Mar. 28, 1980) 87 I.D. 116

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting against multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of Eden Capital Corp. and its clientele where there are ambiguities in the complex contract which provides for a preliminary division of lease obligations and proceeds and establishment of a lease escrow fund to protect funds promised to the client if the client exercises an option by which Eden will buy all leases in a particular lease program subscribed to by the client, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedGenerally--Continued

application they and other clients of Eden have given to the terms.

Harry S. Bills, Kenneth E. Roth, 48 IBLA 356 (July 11, 1980)

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of a leasing service and its clientele where there are ambiguities in the complex contract between them, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients have given to the terms.

Valerie Mellor, Elizabeth R. Drozda, 49 IBLA 303 (Aug. 20, 1980)

Actions of Parties

Where the scope of the work in the contract specifications included providing complete electrical service to the project and clearly indicated that in doing so the contractor must meet the requirements of the serving electric utility, the contractor assumed the risk of the cost of complying with those requirements when it failed to ascertain or inquire, before submitting its bid, what those costs might be.

Appeal of N. J. Riebe Enterprises, Inc., IECA-1266-5-75 (July 30, 1980) 87 I.D. 337

Allowable Costs

Where a contractor is found to have failed to maintain a system of cost records as required in the cost reimbursable contract, an affidavit of the contractor's project director prepared 5 years later is found to be insufficient evidence that unsupported retroactive cost transfers to the contract were costs actually incurred in performance of the contract.

Appeal of Washington University, IECA-1228-11-78 (Mar. 4, 1980) 87 I.D. 88

Where a cost-plus-fixed-fee contractor has signed a contract amendment accepting the auditor's recommended overhead rates and no proof is offered to support claims for other disallowed costs, the Board finds there was a binding agreement on overhead rates and a failure to prove appellant's claims for other costs.

Appeal of National Institute for Community Development, Inc., IECA-1185-3-78 (Mar. 28, 1980) 87 I.D. 116

Where a cost-plus-fixed-fee contract expressly provides for the payment of finally negotiated overhead rates notwithstanding the foregoing provisions which include the limitation of costs provision, the Board finds that the amount determined for overhead costs is not subject to the limitation of the contract estimated costs.

Appeal of Kirschner Associates, Inc., IECA-1319-12-79 (Apr. 1, 1980)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Allowable Costs--Continued

Where performance by a construction contractor was timely completed and no issue of liquidated damages is presented, an unforeseeable, area-wide cement shortage causing increased cost to the contractor will not entitle the contractor to a compensatory adjustment.

Appeal of Lamar D. Construction Co., IBCA-1224-11-78
(May 20, 1980) 87 I.D. 180

Where, upon remand from the Court of Claims, the Board was directed to make a specific finding as to whether, if pipes rejected for small diameters or marked as special hydros had been available for use, the supply of acceptable pipe would have been sufficient to allow pipe laying operations to continue and the contractor merely alleged that its average production of pipe was greater than the average number of pipe it was required to furnish to its pipe-laying subcontractor, the contractor's allegations obscured the fact that its own production and construction schedule called for specific sizes and lengths of pipe at specific times. The Board found that the contractor's total production was insufficient to maintain the contractor's own pipe laying schedule and therefore denied the contractor's claim for reimbursement of the payment it made to settle the delay claim of the subcontractor.

Appeals of Cen-Vi-Ro of Texas, Inc., IBCA-718-5-68 &
IBCA-755-12-68 (June 27, 1980) 87 I.D. 230

Changed Conditions (Differing Site Conditions)

Where, under the standard Differing Site Conditions Clause of the contract, a construction contractor claims entitlement to increased costs caused by heavy rains or other adverse weather conditions, and the undisputed facts indicate no fault on the part of the Government, the contractor has failed to state or prove a claim upon which relief may be granted.

Appeal of The Holloway Cos., IBCA-1182-3-78 (Feb. 11, 1980) 87 I.D. 56

Changes and Extras

Where the Government modified an invitation for bids by adding a note regarding grouting of equipment to two drawings but failed to change the drawings of circuit breakers to show placement of the grout and failed to change the specifications to require grouting of the circuit breakers, the Board held, under the rule of contra proferentem that the contractor's interpretation that the contract did not require grouting of the circuit breakers was reasonable and should prevail. The Government's direction to grout 17 of 21 Government-furnished circuit breakers was a change which entitled the contractor to an equitable adjustment.

Appeal of Slater Electric Co. of California, IBCA-1283-7-79 (Apr. 7, 1980) 87 I.D. 121

The Board finds that constructive changes occurred: (1) when the Contracting Officer's representative directed the contractor to pour concrete into forms, slightly out of compliance, but approved by him with knowledge that some overruns might result; and (2) when the contract documents did not specify the requirement for construction of diversion works at certain sites, neither of the contracting parties being aware of the need for such construction until flooding by upstream activities of third parties, and the Contracting Officer's representative ordered the diversion

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

works constructed which was necessary to complete the project, advised the contractor that it would be paid for the extra costs incurred, and notified the Contracting Officer by letter which enclosed a copy of the project plans with the diversion channels for the extra construction drawn in.

Appeal of Lamar D. Construction Co., IBCA-1224-11-78
(May 20, 1980) 87 I.D. 180

Where an earlier decision of the Board upheld the Government's interpretation of internal diameter tolerances in the manufacture of concrete pipe but the Court of Claims held that the tolerances were too strict and remanded the appeal to the Board for reconsideration of the equitable adjustment to include the effects of erroneous rejections of pipe for small diameters, the Board found that the effects of the Government's actions were so intermingled with the effects of actions for which the contractor was responsible that no formula could be devised to make a precise apportionment of the causes of inefficiencies. In the absence of any sound basis for a precise determination, the Board utilized a jury verdict approach to allow the contractor an equitable adjustment for the effects of the Government's actions early in the production of concrete pipe.

Appeals of Cen-Vi-Ro of Texas, Inc., IBCA-718-5-68 &
IBCA-755-12-68 (June 27, 1980) 87 I.D. 230

Conflicting Clauses

Where the Government modified an invitation for bids by adding a note regarding grouting of equipment to two drawings but failed to change the drawings of circuit breakers to show placement of the grout and failed to change the specifications to require grouting of the circuit breakers, the Board held, under the rule of contra proferentem that the contractor's interpretation that the contract did not require grouting of the circuit breakers was reasonable and should prevail. The Government's direction to grout 17 of 21 Government-furnished circuit breakers was a change which entitled the contractor to an equitable adjustment.

Appeal of Slater Electric Co. of California, IBCA-1283-7-79 (Apr. 7, 1980) 87 I.D. 121

Construction Against Drafter

Where the Government modified an invitation for bids by adding a note regarding grouting of equipment to two drawings but failed to change the drawings of circuit breakers to show placement of the grout and failed to change the specifications to require grouting of the circuit breakers, the Board held, under the rule of contra proferentem that the contractor's interpretation that the contract did not require grouting of the circuit breakers was reasonable and should prevail. The Government's direction to grout 17 of 21 Government-furnished circuit breakers was a change which entitled the contractor to an equitable adjustment.

Appeal of Slater Electric Co. of California, IBCA-1283-7-79 (Apr. 7, 1980) 87 I.D. 121

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedContract Clauses

Where a contractor is found to have failed to maintain a system of cost records as required in the cost reimbursable contract, an affidavit of the contractor's project director prepared 5 years later is found to be insufficient evidence that unsupported retroactive cost transfers to the contract were costs actually incurred in performance of the contract.

Appeal of Washington University, IBCA-1228-11-78
(Mar. 4, 1980) 87 I.D. 88

Where a cost-plus-fixed-fee contract expressly provides for the payment of finally negotiated overhead rates notwithstanding the foregoing provisions which include the limitation of costs provision, the Board finds that the amount determined for overhead costs is not subject to the limitation of the contract estimated costs.

Appeal of Kirschner Associates, Inc., IBCA-1319-12-79
(Apr. 1, 1980)

Where the Permits and Responsibilities clause of a contract required a contractor to obtain all necessary permits and to comply with all applicable laws, codes, and regulations, the fact that the Government spelled out details of the costs for three required permits but made no representation of costs for a fourth permit did not transfer the contractor's responsibility for obtaining the permit to the Government. The Board held that the contractor could not recover for the costs of the permit which it learned about before bid opening but chose not to include in its bid.

Appeal of Manuel C. Jardim, Inc., IBCA-1257-4-79
(Apr. 16, 1980)

Duty to Inquire

Where the scope of the work in the contract specifications included providing complete electrical service to the project and clearly indicated that in doing so the contractor must meet the requirements of the serving electric utility, the contractor assumed the risk of the cost of complying with those requirements when it failed to ascertain or inquire, before submitting its bid, what those costs might be.

Appeal of N. J. Riebe Enterprises, Inc., IBCA-1266-5-79
(July 30, 1980) 87 I.D. 337

General Rules of Construction

Where the Permits and Responsibilities clause of a contract required a contractor to obtain all necessary permits and to comply with all applicable laws, codes, and regulations, the fact that the Government spelled out details of the costs for three required permits but made no representation of costs for a fourth permit did not transfer the contractor's responsibility for obtaining the permit to the Government. The Board held that the contractor could not recover for the costs of the permit which it learned about before bid opening but chose not to include in its bid.

Appeal of Manuel C. Jardim, Inc., IBCA-1257-4-79
(Apr. 16, 1980)

CONTRACTS--ContinuedCONSTRUCTION AND OPERATION--ContinuedGeneral Rules of Construction--Continued

Where the contractor claimed interest for the cost of borrowing money to finance the Government caused increase in costs under a contract awarded before Government regulations required an interest clause, the Board followed the Court of Claims' rule laid down in Bravo Corp. v. United States, 594 F.2d 842 (Ct. Cl. 1979), and denied the contractor's interest claim.

Appeals of Cen-Vi-Ro of Texas, Inc., IBCA-718-5-66 & IBCA-755-12-68 (June 27, 1980) 87 I.D. 230

Intent of Parties

Where the contracting officer responds to appellant's general inquiry on a number of pending claims, the Board finds that response is not a new appealable decision occurring after the effective date of the Contract Disputes Act of 1978 with regard to four appeals previously dismissed for lack of jurisdiction and then pending before the Board on appellant's motion for reconsideration.

Appeals of Gregory Lumber Co., IBCA-1237-12-78, IBCA-1238-12-78, IBCA-1239-12-78, IBCA-1240-12-78 (Mar. 11, 1980) 87 I.D. 94

Subcontractors and Suppliers

Where a contractor claims excusable delays by reason of the failure of suppliers to timely supply material or to replace damaged or nonspecification material, the failure to show that the suppliers' delays were without the fault or negligence of both the contractor and the suppliers precludes a finding that the delays were excusable under the contract.

Appeal of J. T. Gregory & Son, Inc., IBCA-1260-4-79
(Apr. 30, 1980) 87 I.D. 154

CONTRACT DISPUTES ACT OF 1978Jurisdiction

Where the contracting officer responds to appellant's general inquiry on a number of pending claims, the Board finds that response is not a new appealable decision occurring after the effective date of the Contract Disputes Act of 1978 with regard to four appeals previously dismissed for lack of jurisdiction and then pending before the Board on appellant's motion for reconsideration.

Appeals of Gregory Lumber Co., IBCA-1237-12-78, IBCA-1238-12-78, IBCA-1239-12-78, IBCA-1240-12-78 (Mar. 11, 1980) 87 I.D. 94

Where a contractor does not elect to come under the Contract Disputes Act of 1978, except as contained in counsel's posthearing reply brief; the contract is awarded in Aug. of 1977; no claim is pending before the contracting officer on Mar. 1, 1979; and the contracting officer reviews claims already denied after a prehearing conference conducted in Aug. of 1979, in a final attempt to reach a settlement before hearing; the Board holds that, in such circumstances, no valid election to come

CONTRACTS--ContinuedCONTRACT DISPUTES ACT OF 1978--ContinuedJurisdiction--Continued

under the Act has been made, and therefore the Board has no jurisdiction under the Act.

Appeals of DOT Systems, Inc., IBCA-1197-6-78,
IBCA-1204-8-78 (Sept. 30, 1980) 87 I.D. 450

DISPUTES AND REMEDIESBurden of Proof

Where a cost-plus-fixed-fee contractor has signed a contract amendment accepting the auditor's recommended overhead rates and no proof is offered to support claims for other disallowed costs, the Board finds there was a binding agreement on overhead rates and a failure to prove appellant's claims for other costs.

Appeal of National Institute for Community Development, Inc., IBCA-1185-3-78 (Mar. 28, 1980) 87 I.D. 116

Where a contractor seeks relief from the assessment of liquidated damages for delayed completion of the contract work due to alleged excessive rain, the claim is denied for want of proof for failure to show that the amount of rain constituted unusually severe weather.

Appeal of J. T. Gregory & Son, Inc., IBCA-1260-4-79
(Apr. 30, 1980) 87 I.D. 154

An appeal from a termination for default is denied for want of proof where the contractor offers no evidence to support his appeal notice claiming the default was excusable and the termination for default improper.

Appeal of Gil's Aircraft Services, IBCA-1288-8-79
(May 9, 1980)

In a case remanded to the Board by the Court of Claims in which the Board had previously found that 1,013 concrete pipes were wrongfully rejected and the Court of Claims afforded the contractor an opportunity to show by record evidence that more pipes were so rejected, but the contractor offered no probative evidence of additional wrongful rejections, the Board declined to increase the equitable adjustment allowed in its original decision.

Where, upon remand from the Court of Claims, the Board was directed to make a specific finding as to whether, if pipes rejected for small diameters or marked as special hydros had been available for use, the supply of acceptable pipe would have been sufficient to allow pipe laying operations to continue and the contractor merely alleged that its average production of pipe was greater than the average number of pipe it was required to furnish to its pipe-laying subcontractor, the contractor's allegations obscured the fact that its own production and construction schedule called for specific sizes and lengths of pipe at specific times. The Board found that the contractor's total production was insufficient to maintain the contractor's own pipe laying schedule and therefore denied the contractor's claim for reimbursement of the payment it made to settle the delay claim of the subcontractor.

Appeals of Cen-Vi-Ro of Texas, Inc., IBCA-718-5-68 &
IBCA-755-12-68 (June 27, 1980) 87 I.D. 230

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedBurden of Proof--Continued

A contractor who seeks an extension of time under a standard form of construction contract because of an alleged excusable cause of delay, in general, has the burden of proving that the alleged cause of delay actually existed, that it met the criteria of excusability prescribed by the contract and that it delayed the ultimate completion of the contract as a whole.

Appeal of Wunschel & Small, Inc., IBCA-1263-5-79
(June 27, 1980)

DamagesLiquidated Damages

Where a contractor claims excusable delays by reason of the failure of suppliers to timely supply material or to replace damaged or nonspecification material, the failure to show that the suppliers' delays were without the fault or negligence of both the contractor and the suppliers precludes a finding that the delays were excusable under the contract.

Where a contractor seeks relief from the assessment of liquidated damages for delayed completion of the contract work due to alleged excessive rain, the claim is denied for want of proof for failure to show that the amount of rain constituted unusually severe weather.

Appeal of J. T. Gregory & Son, Inc., IBCA-1260-4-79
(Apr. 30, 1980) 87 I.D. 154

Equitable Adjustments

Where, under the standard Differing Site Conditions Clause of the contract, a construction contractor claims entitlement to increased costs caused by heavy rains or other adverse weather conditions, and the undisputed facts indicate no fault on the part of the Government, the contractor has failed to state or prove a claim upon which relief may be granted.

Appeal of The Holloway Cos., IBCA-1182-3-78 (Feb. 11, 1980) 87 I.D. 56

Where the evidence of record is too general and inconclusive to permit a precise mathematical computation of quantum, but preponderates in favor of the contractor for entitlement to some allowance for unpaid excavation resulting from performance of a fixed price highway construction contract, the Board will determine the equitable adjustment by utilization of the jury verdict approach.

In the absence of a statute, procurement regulation, or specific contract provision permitting recovery from the Government for the costs of professional services not contributing directly to the performance of a fixed price type contract, such costs will not be allowed as part of an equitable adjustment, whether incurred before or after the findings of fact and decision of the contracting officer.

Appeal of Tiffany Construction Co., IBCA-1162-8-77
(June 12, 1980) 87 I.D. 210

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedEquitable Adjustments--Continued

Where an earlier decision of the Board upheld the Government's interpretation of internal diameter tolerances in the manufacture of concrete pipe but the Court of Claims held that the tolerances were too strict and remanded the appeal to the Board for reconsideration of the equitable adjustment to include the effects of erroneous rejections of pipe for small diameters, the Board found that the effects of the Government's actions were so intermingled with the effects of actions for which the contractor was responsible that no formula could be devised to make a precise apportionment of the causes of inefficiencies. In the absence of any sound basis for a precise determination, the Board utilized a jury verdict approach to allow the contractor an equitable adjustment for the effects of the Government's actions early in the production of concrete pipe.

Appeals of Cen-Vi-Ro of Texas, Inc., IBCA-718-5-68 & IBCA-755-12-68 (June 27, 1980) 87 I.D. 230

Jurisdiction

The Board has no jurisdiction to reform a contract which is not governed by the provisions of the Contract Disputes Act of 1978. Therefore, where the contract is not under that Act, and a construction contractor presents some evidence in support of a claim that the method of testing, employed by the Government to determine the compressive strength of structural concrete, is unfair, resulting in wrongful monetary penalties, but fails to allege or prove that the Government did not comply with the contract specifications in performing such testing, the Board will find such claim to be a request for reformation of the contract and will dismiss the claim for lack of jurisdiction.

Appeal of Lamar D. Construction Co., IBCA-1224-11-78 (May 20, 1980) 87 I.D. 180

Where the Board finds an indefinite quantity option-type contract to have been consummated by the parties, as opposed to a requirements-type contract, the contractor assumes the risk of whether the Government will order more than the minimum estimate of services anticipated to be ordered, and the Board, as a matter of law, is without jurisdiction to grant an equitable adjustment to the contractor under the changes clause, termination for convenience, or other contract clauses for claimed costs alleged to have resulted from the negligent preparation of maximum estimates.

Appeals of DOT Systems, Inc., IBCA-1197-6-78, IBCA-1204-8-78 (Sept. 30, 1980) 87 I.D. 450

Termination for Convenience

Where it is undisputed that the Government ordered the minimum amount of services required to be ordered under an indefinite quantity option contract, and the Board finds that the failure of the contractor to timely perform delivery of the last seven call orders for services did not result from the low volume of work ordered by the Government, but instead, from reduction of typing staff, reduction of hours of typists employed to perform the contract, and failure to give priority to the contract work over other work, the contractor will be denied its request for a conversion of a termination for default to a termination for convenience of the Government.

Appeals of DOT Systems, Inc., IBCA-1197-6-78, IBCA-1204-8-78 (Sept. 30, 1980) 87 I.D. 450

CONTRACTS--ContinuedDISPUTES AND REMEDIES--ContinuedTermination for DefaultGenerally

The contracting officer's decision to terminate for default a fixed price contract for the delivery of a single forked lift truck for a stated price is deemed proper where the appellant failed to timely deliver the truck to the specified delivery point by the specified contract delivery date.

Appeals of Yale Industrial Trucks, Baltimore/Washington, Inc., IBCA-1287-7-79 & IBCA-1293-8-79 (Sept. 12, 1980) 87 I.D. 407

Where a contract specifies the complement and standard for drilling equipment to be furnished, neither the preaward survey of appellant's equipment, nor the commencement of performance with incomplete and admittedly noncompliance equipment is deemed a waiver of the contract requirement, and a default termination after issuance of a "cure notice" is upheld upon the failure of the contractor to provide equipment as specified in the contract.

Appeals of Allied Drilling, Inc., IBCA-1242-1-79 & IBCA-1250-2-79 (Sept. 12, 1980) 87 I.D. 400

Excess Costs

Where the Government presented evidence of immediate need for replacement of a forked lift truck in need of repairs and presenting a safety hazard, the Government's action to repurchase the truck from the third lowest bidder who had the only immediately available truck complying with the contract standards is deemed proper and consistent with the duty to mitigate the repurchase costs.

Appeals of Yale Industrial Trucks, Baltimore/Washington, Inc., IBCA-1287-7-79 & IBCA-1293-8-79 (Sept. 12, 1980) 87 I.D. 407

PERFORMANCE OR DEFAULTExcusable Delays

Where a contractor seeks relief from the assessment of liquidated damages for delayed completion of the contract work due to alleged excessive rain, the claim is denied for want of proof for failure to show that the amount of rain constituted unusually severe weather.

Appeal of J. T. Gregory & Son, Inc., IBCA-1260-4-79 (Apr. 30, 1980) 87 I.D. 154

A contractor who seeks an extension of time under a standard form of construction contract because of an alleged excusable cause of delay, in general, has the burden of proving that the alleged cause of delay actually existed, that it met the criteria of excusability prescribed by the contract and that it delayed the ultimate completion of the contract as a whole.

Appeal of Wunschel & Small, Inc., IBCA-1263-5-79 (June 27, 1980)

CONVEYANCES

GENERALLY

Where over the course of several decades patented land has been conveyed according to the description in the patent by willing buyers and sellers in "arm's length" transactions, the subsequent grantees of the original entrymen had a duty to identify the land that they were purchasing, and the Government will not amend the patent to substitute other public land simply because the present owner believes, or even proves, that certain of the land settled by the original entryman was misdescribed by him, absent any showing of a basis for equitable relief.

George Val Snow, 46 IBLA 101 (Feb. 29, 1980)

Where evidence is persuasive that certain land was included in a homestead patent as the consequence of an error in description, and other land was settled, improved and occupied for several decades thereafter, an application to reform the patent will be allowed where the concerned administrative agencies do not object, the Government's interests are not unduly prejudiced, no third party's rights are affected, and substantial equities of the applicant will thereby be preserved.

Mantle Ranch Corp., 47 IBLA 17 (Apr. 11, 1980)
87 I.D. 143

COURTS

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so is apparently res judicata, the only question being whether the order is the court's final action.

Supron Energy Corp. et al., 46 IBLA 181 (Mar. 21, 1980)

DESERT LAND ENTRY

GENERALLY

Where an applicant, with a preference right of entry, fails to properly execute and sign the application for a desert land entry, the applicant's preference right of entry is extinguished; the application, however, may be treated as a regular application with priority established from the date of signing.

"Resident citizen." As used in sec. 2 of the Act of Mar. 3, 1891, 26 Stat. 1096, 43 U.S.C. § 325 (1976), the term "resident citizen" refers to someone who is actually living in the State at the time of entry, and does not refer to individuals who have established tax or voting residency within a state but who are not actually residing therein.

Sandy C. Baicy, 46 IBLA 140 (Mar. 19, 1980)

An application for a desert land entry is not properly executed under 43 CFR 2521.2 where the applicant fails to correctly describe the land applied for. Subject to valid intervening rights and competing interests, an applicant may acquire priority from the date of the filing of the statement of reasons on which the correct land description is filed with the BLM State Office.

Stephen F. Bellem, 48 IBLA 5 (May 27, 1980)

Patricia Manning, 48 IBLA 244 (June 17, 1980)

-- Continued

DESERT LAND ENTRY--Continued

GENERALLY--Continued

Nalon A. Taylor, 48 IBLA 336 (July 3, 1980)

Where an applicant has filed two desert land entry applications, the earlier of which does not conform to the classification and opening order, and on appeal to this Board opts for the second application to the exclusion of the first, such application may acquire priority from the date the statement of reasons was filed, subject to valid intervening rights or competing interests in the land.

A desert land applicant, whose application is rejected because of an adverse classification, and does not timely seek appropriate appellate review thereof, loses whatever rights may have accrued to him by virtue of the application and he will not enjoy any preference right to the land when it is subsequently classified as suitable for desert land entry.

Bruce C. Newcomb, 48 IBLA 263 (June 30, 1980)

Where the Bureau of Land Management has rejected desert land entry applications because cultivation of the jojoba plant would not meet the requirements of the Desert Land Act, and where appellants submit extensive data and analysis in an attempt to rebut the BLM conclusion, the cases may be remanded to BLM for further consideration and development of the record.

Joanne F. Wright et al., 49 IBLA 237 (Aug. 18, 1980)

APPLICATIONS

Where an applicant, with a preference right of entry, fails to properly execute and sign the application for a desert land entry, the applicant's preference right of entry is extinguished; the application, however, may be treated as a regular application with priority established from the date of signing.

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Stephen F. Bellem, 48 IBLA 5 (May 27, 1980)

Patricia Manning, 48 IBLA 244 (June 17, 1980)

Nalon A. Taylor, 48 IBLA 336 (July 3, 1980)

DESERT LAND ENTRY--Continued

APPLICATIONS--Continued

Where an applicant has filed two desert land entry applications, the earlier of which does not conform to the classification and opening order, and on appeal to this Board opts for the second application to the exclusion of the first, such application may acquire priority from the date the statement of reasons was filed, subject to valid intervening rights or competing interests in the land.

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Bruce C. Newcomb, 48 IBLA 263 (June 30, 1980)

CLASSIFICATION

A desert land applicant, whose application is rejected because of an adverse classification, and does not timely seek appropriate appellate review thereof, loses whatever rights may have accrued to him by virtue of the application and he will not enjoy any preference right to the land when it is subsequently classified as suitable for desert land entry.

Bruce C. Newcomb, 48 IBLA 263 (June 30, 1980)

Certified mailing is an acceptable form of service under Department practice. 43 CFR 1821.2-4. Sending land classification proposals and decisions to a petitioner-applicant by certified mail meets the requirements in 43 CFR 2450.3 and 2450.4 that those documents be served on the petitioner-applicant.

Elbert O. Sowerwine, Jr., 50 IBLA 15 (Sept. 9, 1980)

CULTIVATION AND RECLAMATION

Where the Bureau of Land Management has rejected desert land entry applications because cultivation of the jojoba plant would not meet the requirements of the Desert Land Act, and where appellants submit extensive data and analysis in an attempt to rebut the BLM conclusion, the cases may be remanded to BLM for further consideration and development of the record.

Joanne F. Wright et al., 49 IBLA 237 (Aug. 18, 1980)

EXTENSION OF TIME

BLM properly denies a third extension of time to file final proof of compliance on a desert land entry and cancels that entry where there is no reasonable prospect that the entryman will be able to make final proof of reclamation, irrigation, and cultivation within the time required by law.

Lenard D. Easterday, Lorene I. Easterday, 51 IBLA 132 (Nov. 20, 1980)

EMINENT DOMAIN

(See also Irrigation Claims--if included in this Index.)

Eminent domain is the power of the sovereign to take private property for a public use without the owner's consent, conditioned on payment of just compensation. A state has no right to condemn Federally owned lands absent consent from the Congress of the United States.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

ENDANGERED SPECIES ACT OF 1973

GENERALLY

The Endangered Species Act of 1973, including the taking prohibitions of sec. 9, applies to Native Americans exercising treaty hunting and fishing rights.

Application of the Endangered Species Act to Native Americans with Treaty Hunting and Fishing Rights, M-36926 (Nov. 4, 1980) 87 I.L. 525

AMENDMENTS OF 1978

Where a tourist unknowingly imports a listed species into the United States in violation of the Endangered Species Act of 1973, the legislative history of the 1978 amendments to that Act indicates that forfeiture of the item will be sought rather than the imposition of a civil penalty.

Charles R. Rittenberry (Appellant) v. U.S. Fish and Wildlife Service (Appellee), 4 CHA 42 (Aug. 13, 1980)

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

A reexport certificate may only be issued pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora when the country of import is satisfied that the item in question was imported into that country in accordance with the Convention.

Charles R. Rittenberry (Appellant) v. U.S. Fish and Wildlife Service (Appellee), 4 CHA 42 (Aug. 13, 1980)

ENVIRONMENTAL POLICY ACT

(See also National Environmental Policy Act of 1969--if included in this Index.)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

ENVIRONMENTAL POLICY ACT--Continued

Where it is implicit in an administrative decision that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

James I. Thompson, 51 IBLA 154 (Nov. 26, 1980)

ENVIRONMENTAL QUALITY

(See also Water Pollution Control--if included in this Index.)

GENERALLY

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on environmental analysis reports for the Uinta National Forest, special protective stipulations are not unreasonable, per se.

Oil and gas lessees must bear the expenses occasioned by compliance with stipulations for the protection of other land use values.

Diane B. Katz, 47 IBLA 177 (May 7, 1980)

ENVIRONMENTAL STATEMENTS

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

Where a programmatic environmental impact statement (EIS) has been completed and this has been supplemented by a site-specific environmental analysis concerning the impacts, mitigating measures, and alternatives for a specified timber sale, the law does not require preparation of an individual EIS for the timber sale in the absence of a material change in circumstances or departure from policy covered in the overall EIS.

Preserve Our Scenic Environment, 47 IBLA 276 (May 15, 1980)

Where it is implicit in an administrative decision that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

James I. Thompson, 51 IBLA 154 (Nov. 26, 1980)

EQUITABLE ADJUDICATION

GENERALLY

Where EIM classifies a 4-acre tract as suitable for disposal under the Small Tract Act, thereby segregating it from acquisition under other public land laws, then grants an individual a lease thereon with option to purchase, pursuant to which the lessee constructs buildings and occupies the tract, the protest and application of an Alaska Native, made for the first time 12 years later, will be rejected, as a matter of law and equity where the Native was claiming 160 acres of different land during the preceding 6 years, and had made no assertion of interest in the small tract, but rather had expressly acknowledged the existence of the leasehold.

Evelyn Alexander, 45 IBLA 28 (Jan. 14, 1980)

Where a State Office rejects a Native allotment application because it was not timely filed and did not have the required certification and land description, and where it is shown such deficiencies were beyond applicant's control, the case will be remanded to the State Office to allow 60 days for the deficiencies to be cured, and for the State Office, if it finds substantial compliance with the law, to apply doctrine of equitable adjudication and then to accept the application with the late filing, proper certification, and amended land description, all else being regular.

Herbert Herrmann, 45 IBLA 43 (Jan. 14, 1980)

Where over the course of several decades patented land has been conveyed according to the description in the patent by willing buyers and sellers in "arm's length" transactions, the subsequent grantees of the original entrymen had a duty to identify the land that they were purchasing, and the Government will not amend the patent to substitute other public land simply because the present owner believes, or even proves, that certain of the land settled by the original entryman was misdescribed by him, absent any showing of a basis for equitable relief.

George Val Snow, 46 IBLA 101 (Feb. 29, 1980)

Equitable adjudication cannot be properly invoked on behalf of an appellant who has no interest in the entry subject to the proposed adjudication.

Mary Olympic, 47 IBLA 58 (Apr. 14, 1980)

No decision of any Federal court, or any formal decision or Instruction issued by the Department of the Interior has ever purported to hold that a mining claimant is not required under 30 U.S.C. § 28 (1976) to perform annual assessment work. Relevant court decisions deal not with the question whether oil shale claimants are required to comply with the provisions of sec. 28, but whether the United States is a beneficiary of a failure to perform the assessment work, and such decisions expressly note that a mining claimant is required to perform labor of \$100 annually for each claim.

The defense of laches is not available against the Government in cases involving public lands. Even where laches determined to be an available defense, it would clearly be circumscribed by the same limitations surrounding the doctrine of estoppel.

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aidabelle Frown et al., 48 IBLA 267 (June 30, 1980) 87 I.L. 248

EQUITABLE ADJUDICATION--Continued

GENERALLY--Continued

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by a State Office of BLM, of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM State Office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Donald W. Cover, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

SUBSTANTIAL COMPLIANCE

Where a Native allotment applicant has not established use and occupancy of the lands identified in his or her allotment application, the applicant has not substantially complied with the Alaska Native Allotment Act and equitable adjudication under 43 CFR 1871.1-1 cannot be properly invoked.

Mary Olympic, 47 IBLA 58 (Apr. 14, 1980)

ESTOPPEL

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Estoppel is available as a defense against the Government if the Government's wrongful conduct threatens to work a serious injustice and if the public's interest would not be unduly damaged by the imposition of estoppel.

Estoppel of the Government is an extraordinary remedy, especially as it relates to public lands, and is to be applied with the greatest care and circumspection.

Royal Harris, 45 IBLA 87 (Jan. 17, 1980)

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Dennis L. Lattery, 45 IBLA 219 (Jan. 31, 1980)

Marko and Yarrow Lewis, 46 IBLA 257 (Mar. 27, 1980)

The elements of an estoppel are the following: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

Estoppel of the Government is an extraordinary remedy, especially as it relates to public lands, and is to be applied with the greatest care and circumspection.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Bert N. Smith, Paul Smith v. Bureau of Land Management, 46 IBLA 385 (July 11, 1980)

ESTOPPEL--Continued

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

Parrell P. Riggs, Karen Sue Riggs, 46 IBLA 132 (Mar. 19, 1980)

George W. Murphy, 48 IBLA 123 (May 30, 1980)

The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

Forothea M. Taylor, Robert Taylor, 46 IBLA 196 (Mar. 24, 1980)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Nevada Pacific Co., Inc., 46 IBLA 208 (Mar. 24, 1980)

Thomas Taggart, 46 IBLA 350 (Apr. 8, 1980)

Tim Anderson, 47 IBLA 348 (May 21, 1980)

Robert W. Miller, Marjorie Firper Miller, 51 IBLA 364 (Dec. 29, 1980)

A party seeking to estop the Office of Surface Mining Reclamation and Enforcement from asserting that the party did not have a small operator exemption for a particular permit must clearly demonstrate its entitlement to the estoppel.

Daniel Pros. Coal Co., 2 IBAMA 45 (Apr. 10, 1980)
87 I.L. 138

Reliance on incomplete records maintained by Federal land offices cannot confer upon a hardrock prospecting permittee any rights in derogation of a prior permittee.

ASARCO, Inc., 47 IBLA 14 (Apr. 11, 1980)

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Alva F. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Earlene Y. Haymes et al., 49 IBLA 243 (Aug. 16, 1980)

Estoppel will not lie where assertedly misleading advice is timely rebutted by the adoption of a regulation clarifying the advice given.

Alice E. Deetz, 48 IBLA 59 (May 29, 1980)

ESTOPPEL--Continued

No decision of any Federal court, or any formal decision or Instruction issued by the Department of the Interior has ever purported to hold that a mining claimant is not required under 30 U.S.C. § 28 (1976) to perform annual assessment work. Relevant court decisions deal not with the question whether oil shale claimants are required to comply with the provisions of sec. 28, but whether the United States is a beneficiary of a failure to perform the assessment work, and such decisions expressly note that a mining claimant is required to perform labor of \$100 annually for each claim.

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

Estoppel will not lie where assertedly misleading advice is timely rebutted by regulations clarifying the advice given.

Clayton H. Read, Gerald A. Myres, 49 IBLA 271 (Aug. 18, 1980)

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by a State Office of BLM, of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM State Office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Donald W. Cover, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

EVIDENCE

GENERALLY

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

Where mineral reports submitted in connection with a previous contest recited only that a valuable mineral had been discovered, but failed to include a mineral examiner's assessment of the quantity and quality of

EVIDENCE--Continued

GENERALLY--Continued

the valuable mineral, marketability, or costs of extraction and transportation, and where the uncontradicted opinion of the Government's witness was that the sampling method was improper, the Administrative Law Judge was correct in according little weight to the reports.

United States v. Richard G. Clemans et al., 45 IBLA 64 (Jan. 17, 1980)

Exclusive use of a leasing service address confers to lease, promotional material which emphasizes the sales ability of the service, past use of a form agreement which created an enforceable interest in prospective leases, past actions of the leasing service related thereto, and allegations of a tacit understanding between the service and its clients are speculative and insufficient as a matter of law to demonstrate the existence of a scheme which might cause rejection of the offers under 43 CFR 3112.5-2.

Ervin J. Powers, 45 IBLA 186 (Jan. 30, 1980)

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered. If the Government fails to make a sufficient prima facie case against a mining claim, the claimant may move to have the contest dismissed and rest his case. However, when the claimant goes forward with his evidence, the Administrative Law Judge must consider the evidence presented and weigh it in accordance with its probative value. In choosing to rebut the case, the claimant bears the burden of doing so by a preponderance of the evidence and bears the risk of nonpersuasion if he fails.

United States v. Clare Williamson and Larine Furice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.L. 34

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if the hearing should be reopened.

United States v. Ludwig G. Rosenkranz, 46 IBLA 109 (Feb. 29, 1980)

The decision of an Administrative Law Judge will not be disturbed on appeal where the preponderance of the evidence supports the result reached, and the appellants have not pointed out any error in the decision.

United States v. Roy Peterson & Charles R. Sweet, 47 IBLA 92 (Apr. 23, 1980)

While the testimony of a Government mineral examiner that he/she has examined a mining claim and found no evidence of mineralization which would support a discovery, is normally sufficient to establish a prima facie case, such a conclusion must be premised on a correct standard of law. Where a Government mineral examiner applies a standard which is not correct under the law, his/her opinion as to a claim's validity cannot serve, by itself, to establish a prima facie case of invalidity.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

EVIDENCE--ContinuedGENERALLY--Continued

The Board adopts a decision of an Administrative Law Judge holding mining claims null and void for lack of discovery of a valuable deposit of an uncommon variety of limestone, where nondiscovery is established by the totality of the evidence.

United States v. Joseph J. Segna et al., 49 IBLA 73 (July 22, 1980)

The postmark date of a rental payment for an oil and gas lease is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark.

Kenneth W. Macek, 49 IBLA 153 (July 30, 1980)

The Board adopts a decision of an Administrative Law Judge holding a placer mining claim null and void for lack of discovery of a valuable mineral deposit within the limits of the claim, where nondiscovery clearly is established by the evidence of record.

United States v. Charles M. Ledford et al., 49 IBLA 353 (Aug. 29, 1980)

ADMISSIBILITY

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard G. Clewans et al., 45 IBLA 64 (Jan. 17, 1980)

BURDEN OF PROOF

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered. If the Government fails to make a sufficient prima facie case against a mining claim, the claimant may move to have the contest dismissed and rest his case. However, when the claimant goes forward with his evidence, the Administrative Law Judge must consider the evidence presented and weigh it in accordance with its probative value. In choosing to rebut the case, the claimant bears the burden of doing so by a preponderance of the evidence and bears the risk of nonpersuasion if he fails.

United States v. Clare Williamson and Lapine Pupice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Where, in the hearing of a mining claim contest in which the presence of a mineral deposit within the limits of a claim is at issue and the claim is accessible, it is established that the Government mineral examiner made no professional examination of certain of the contested claims, the testimony of the Government mineral examiner, without more, is insufficient to establish a prima facie case of invalidity.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

EVIDENCE--ContinuedBURDEN OF PROOF--Continued

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

United States v. Ludwig G. Rosenkranz, 46 IBLA 109 (Feb. 29, 1980)

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Hyatt Lake Homeowners Ass'n, 48 IBLA 159 (June 9, 1980)

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aidabelle Ercyn et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bert N. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

When the United States contests a mining claim, it has assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint. The burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case. The United States has established a prima facie case when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit.

United States v. Ubehebe Lead Mines Co., 49 IBLA 1 (July 15, 1980)

The burden of proof as to the character of land applied for under the Swamp Land Acts falls upon the applicant.

State of California, Stockdale Development Corp., 51 IBLA 3 (Oct. 28, 1980)

EVIDENCE--Continued

HEARSAY

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard G. Clemans et al., 45 IBLA 64 (Jan. 17, 1980)

PREPONDERANCE

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to location, the claimant, as proponent of the rule, has the ultimate burden of proof as to validity of the claim. The Government, however, must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

PRESUMPTIONS

Where a mining claimant merely asserts that because of a 9-day difference between the posting of an envelope and the date received stamp of BLM, ELM may have mishandled notices of location submitted in attempted compliance with the requirements of 43 CFR 3833.1-2 (b), allegedly causing them to be date stamped by BLM as untimely, and there is nothing else in the record to support this conjecture he has not met the burden of rebutting the presumption that BLM officials have properly discharged their duties in receiving and promptly date stamping all such notices tendered to them.

Henry D. Friedman, 49 IBLA 97 (July 28, 1980)

Where oil and gas lease applicants contend that ELM wrongly excluded three of their simultaneous offers from a drawing for not paying the filing fees when in fact the fees had accompanied the offers and been deposited by BLM, but fail to provide sufficient evidence of such payments after having been afforded reasonable opportunity to do so, the duties of the BLM officials will be presumed to have been properly discharged.

Cassius C. Epperson et al., 50 IBLA 231 (Sept. 30, 1980)

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties. Where the record reveals no conclusive evidence that an appeal was filed timely, but the responsible official has referenced in correspondence that the appeal was timely, the presumption of administrative regularity will attach and the appeal considered as timely filed.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

EVIDENCE--Continued

PRIMA FACIE CASE

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to location, the claimant, as proponent of the rule, has the ultimate burden of proof as to validity of the claim. The Government, however, must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Where, in the hearing of a mining claim contest in which the presence of a mineral deposit within the limits of a claim is at issue and the claim is accessible, it is established that the Government mineral examiner made no professional examination of certain of the contested claims, the testimony of the Government mineral examiner, without more, is insufficient to establish a prima facie case of invalidity.

The mere fact that mining claims are allegedly located in the same kind of area with the same topography as other claims where there has been no discovery does not, without more, support the conclusion that there is no discovery on the former claims. Geologic inference drawn from such alleged similarities is insufficient by itself to show that no discovery has been made on the claims.

Uncontradicted evidence of nonproduction of a mining claim, which has continued over a period of years, is sufficient, without more, to establish a prima facie case of invalidity of the mining claim.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

The assertion that annual assessment work has not been performed is the assertion of a negative fact. If an examination of the mining claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence to this effect would be sufficient to establish a prima facie case. It would then devolve upon the claimant to show by a preponderance of the countervailing evidence that he has substantially complied with the statute.

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Edabelle Frown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

SUFFICIENCY

Exclusive use of a leasing service address on offers to lease, promotional material which emphasizes the sales ability of the service, past use of a form agreement which created an enforceable interest in prospective leases, past actions of the leasing service related thereto, and allegations of a tacit understanding between the service and its clients are speculative and insufficient as a matter of law to demonstrate the existence of a scheme which might cause rejection of the offers under 43 CFR 3112.5-2.

Ervin J. Powers, 45 IBLA 186 (Jan. 30, 1980)

EVIDENCE--ContinuedSUFFICIENCY--Continued

The mere fact that mining claims are allegedly located in the same kind of area with the same topography as other claims where there has been no discovery does not, without more, support the conclusion that there is no discovery on the former claims. Geologic inference drawn from such alleged similarities is insufficient by itself to show that no discovery has been made on the claims.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

While the testimony of a Government mineral examiner that he/she has examined a mining claim and found no evidence of mineralization which would support a discovery, is normally sufficient to establish a prima facie case, such a conclusion must be premised on a correct standard of law. Where a Government mineral examiner applies a standard which is not correct under the law, his/her opinion as to a claim's validity cannot serve, by itself, to establish a prima facie case of invalidity.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

Where oil and gas lease applicants contend that BLM wrongly excluded three of their simultaneous offers from a drawing for not paying the filing fees when in fact the fees had accompanied the offers and been deposited by BLM, but fail to provide sufficient evidence of such payments after having been afforded reasonable opportunity to do so, the duties of the BLM officials will be presumed to have been properly discharged.

Cassius C. Epperson et al., 50 IBLA 231 (Sept. 30, 1980)

WEIGHT

While the testimony of a Government mineral examiner that he/she has examined a mining claim and found no evidence of mineralization which would support a discovery, is normally sufficient to establish a prima facie case, such a conclusion must be premised on a correct standard of law. Where a Government mineral examiner applies a standard which is not correct under the law, his/her opinion as to a claim's validity cannot serve, by itself, to establish a prima facie case of invalidity.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

EXCHANGES OF LAND

(See also Indian Lands, Private Exchanges, State Exchanges, Wildlife Refuges & Projects--if included in this Index.)

GENERALLY

Where an oil and gas lease has inadvertently been issued for land, part of which was the subject of a forest exchange application, the cancellation of that part of the lease will be reversed if the exchange application did not include the mineral estate and has been withdrawn by the proponent, and no other obstacle or objection to the lease exists.

Kerr-McGee Corp., 46 IBLA 156 (Mar. 19, 1980)

EXCHANGES OF LAND--ContinuedGENERALLY--Continued

An exchange application tendered pursuant to 43 CFR Subpart 3526 is properly rejected by ELM where a preference right lease applicant has not demonstrated to the Secretary that he has a preference right to a lease.

John S. Wold, Eugene V. Simons, 48 IEIA 106 (May 30, 1980)

EXECUTIVE ORDERS AND PROCLAMATIONS

A Presidential proclamation, which extended the boundaries of a forest reserve and which specifically stated that prior proclamations respecting the reserve were "superseded," had the effect of and was construed as restoring to entry lands earlier withdrawn by a Secretarial order which reserved from public entry, for protection of giant sequoia trees, a township situated within the boundaries of the forest reserve. This conclusion is particularly compelling in view of the long continued course of administrative action treating the subject township as having been restored to entry for purposes of prospecting, locating and developing mineral resources, subject to compliance with the rules and regulations pertaining to forest reserves.

Dolores Olsen and Wesley E. Mace, et al., 45 IEIA 232 (Feb. 4, 1980)

FEDERAL EMPLOYEES AND OFFICERS

(See also Administrative Authority, Claims Against the United States, Officers & Employees--if included in this Index.)

GENERALLY

Idaho Economically Homogeneous Area survey failed to conform to 5 U.S.C. § 5911 (1976) and implementing regulations when values from urban and rural areas were averaged to reach rental values for an entire state without regard to difference in rents between cities and rural or small town localities. The rental rate figures derived from mere averaging of values does not result in reasonable values required by law.

Euane M. Edverson, D-79-9 (Mar. 3, 1980)

Pursuant to 5 U.S.C. § 5911 (1976), the appraisal of Government-furnished quarters at the Polacca Day School, Hopi Indian Agency, by the Bureau of Indian Affairs, Phoenix Area Office, and the resulting adjustment of basic rental rates were based upon the reasonable value of the quarters to the employees in the circumstances under which provided, occupied, or made available.

Daniel L. Clavio, 4 CHA 54 (Sept. 11, 1980)

AUTHORITY TO BIND GOVERNMENT

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Royal Harris, 45 IEIA 87 (Jan. 17, 1980)

Dennis L. Lattery, 45 IBLA 219 (Jan. 31, 1980)

Marko and Yarrow Lewis, 46 IBLA 257 (Mar. 27, 1980)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

Darrell P. Riggs, Karen Sue Riggs, 46 IBLA 132 (Mar. 19, 1980)

George W. Murphy, 48 IBLA 123 (May 30, 1980)

The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

Dorothea M. Taylor, Robert Taylor, 46 IBLA 198 (Mar. 24, 1980)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Nevada Pacific Co., Inc., 46 IBLA 208 (Mar. 24, 1980)

Thomas Taggart, 46 IBLA 350 (Apr. 8, 1980)

Tim Anderson, 47 IBLA 348 (May 21, 1980)

Robert W. Miller, Marjorie Eipper Miller, 51 IBLA 364 (Dec. 29, 1980)

Reliance upon erroneous or incomplete information provided by employees of the Bureau of Land Management cannot create any rights not authorized by law.

Clayton H. Read and Gerald A. Myres, 49 IBLA 200 (Aug. 11, 1980)

Clayton H. Read, Gerald A. Myres, 49 IBLA 271 (Aug. 18, 1980)

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by a State Office of BLM, of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM State Office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Donald W. Cover, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976
(See also Hearings--if included in this Index.)

GENERALLY

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of an occupancy claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

Royal Harris, 45 IBLA 87 (Jan. 17, 1980)

Dennis I. Lattery, 45 IBLA 219 (Jan. 31, 1980)

Darrell P. Riggs, Karen Sue Riggs, 46 IBLA 132 (Mar. 19, 1980)

Dorothea M. Taylor, Robert Taylor, 46 IBLA 198 (Mar. 24, 1980)

Thomas Taggart, 46 IBLA 350 (Apr. 8, 1980)

George W. Murphy, 48 IBLA 123 (May 30, 1980)

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

Under sec. 701(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), wilderness review under sec. 603 of FLPMA is applicable to Oregon and California railroad (C&C) lands only to the extent that it is consistent with the Act of Aug. 26, 1937. The Act requires C&C lands to be managed for permanent forest production. No wilderness review is required where the C&C lands are being managed for commercial timber production.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

The provisions of sec. 603(a), FLPMA, requiring the Secretary to review those roadless areas of 5,000 acres or more having wilderness characteristics does not apply to revested Oregon and California (C&C) Railroad lands classified as timberlands.

Oregon Wilderness Coalition, 45 IBLA 347 (Feb. 7, 1980)

Where regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976 require reference to the Bureau of Land Management serial number under which a mining claim is recorded for future recordings, a claimant fails to include the number when he files a notice of assessment work, and he is specifically informed of this and other requirements, but fails to furnish the number, the filing is unacceptable, and failure to comply with the filing requirements constitutes abandonment of the claim, as provided by the Act.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, has until Oct. 22, 1979, to record the location. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned.

H. L. Smith, 46 IBLA 62 (Feb. 22, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

John Walter Chaney, 46 IBLA 229 (Mar. 27, 1980)

Where BLM purportedly has appraised the property on which appellant allegedly has an occupancy lease issued pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), and appellant submits evidence which raises a question as to whether the correct property was appraised, supported by a statement from an independent real estate appraiser, and presents other data which challenges the validity of the appraisal, the State Office decision will be vacated and the case remanded to BLM for consideration of whether a new appraisal is warranted.

James T. Brown, 46 IBLA 265 (Mar. 27, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Beryl Rhodes, 46 IBLA 287 (Mar. 31, 1980)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Phyllis Wood et al., 46 IBLA 309 (Apr. 4, 1980)

Beth Mallory, 47 IBLA 296 (May 19, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner.

Glen J. McCrorey and Deloris McCrorey, 46 IBLA 355 (Apr. 8, 1980)

Cleo May Fresh, Marjorie P. Detertis, 50 IBLA 363 (Oct. 16, 1980)

Robert E. Donahue, 50 IBLA 374 (Oct. 21, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

George Toole, 47 IBLA 89 (Apr. 21, 1980)

Arthur W. Schmidt, 47 IBLA 143 (May 6, 1980)

Virginia Edwards, 47 IBLA 301 (May 19, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official notice of location or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, failing which the claim is properly deemed abandoned and void.

Sheldon Margen, 47 IBLA 118 (Apr. 28, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Timely transmittal of the documents to the wrong BLM Office does not meet the requirements where the documents are not filed in the proper office timely.

John S. Hedson, 47 IBLA 129 (Apr. 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A document received by BLM on Oct. 24, 1979, is not timely filed.

Dwight F. Kennedy, 47 IBLA 132 (Apr. 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing in a BLM District Office rather than the designated BLM State Office is not sufficient.

John Sloan, 47 IBLA 146 (May 6, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Fred A. Dunham, 47 IBLA 152 (May 6, 1980)

George J. Burnett, 50 IBLA 124 (Sept. 24, 1980)

Lorraine Mohr, 50 IBLA 147 (Sept. 26, 1980)

County of Imperial, 51 IBLA 250 (Dec. 15, 1980)

Stephen Greist, 51 IBLA 287 (Dec. 17, 1980)

The standard of review in the case of rights-of-way applications for domestic water pipelines is whether the decisions demonstrate a reasoned analysis of the factors involved, with due regard for the public interest. A decision by BLM, made in exercise of its discretion, will be affirmed in the absence of sufficient reason to disturb it.

"Public sentiment" and/or "public opposition" are not synonymous with "the public interest" as used in FLPMA. That Act addresses the "national interest." BLM is not required to accede to the wishes of a vocal group in making its decision.

Where the bases of decisions rejecting rights-of-way applications for domestic water facility are contradicted by the Environmental Analysis Report on the project and alternatives enumerated therein, and where BLM failed to consider possible mitigating actions suggested by appellant, the decisions will be vacated and remanded for further consideration.

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Documents filed in the proper BLM office after that date cannot be accepted even if they were erroneously transmitted to the Montana Department of Natural Resources before that date and were on file with the county office.

Jeanne G. Owens, 47 IBLA 172 (May 7, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

M. E. Rogers, 47 IBLA 196 (May 7, 1980)

Edwin Forsberg, 47 IBLA 235 (May 13, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper ELM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with ELM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Documents received in the Bureau of Land Management's Burns, Oregon, District Office on Oct. 22, 1979, are not timely filed in the proper ELM office, where pursuant to 43 CFR 1821.2-1(d), the proper office with jurisdiction over the area in which the claim is located is the Oregon State Office in Portland, and the documents are not received in the State Office until after Oct. 22, 1979.

Floyd Zaiger, 47 IBLA 204 (May 7, 1980)

The owner of an unpatented mining claim on Federal lands located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location in the proper BLM office. Recordation is effected by filing a copy of the official record of the location notice or certificate with the proper ELM office and payment of a service charge of \$5 per claim.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid.

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper ELM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year, or a notice of intention to hold the mining claim.

Failure to comply with the regulations governing recordation of notice of location or assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

G. E. Monk, 47 IBLA 213 (May 13, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Appellant's attempt to mail the documents on Saturday, Oct. 20, 1979, will not excuse late filing even though he was told by the Post Office that the documents would be in Phoenix by Monday, Oct. 22, 1979.

Ray F. Coffee, 47 IBLA 217 (May 13, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The requirements are not met where documents are not received by the proper BLM office until Oct. 25, 1979, even though the claimant had the envelope date stamped by a different BLM office on Oct. 22, 1979, before mailing it to the proper office.

Santa Fe Nuclear, Inc., 47 IBLA 220 (May 13, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 2, 1979, and the service fee therefor is not paid to BLM until Oct. 29, 1979, the recordation date of the notice is Oct. 29, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Oct. 29, 1979, is not timely filed.

Charles P. Seel, 47 IBLA 229 (May 13, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned and is void. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, accompanied by the proper fee.

Carl A. Borgstrom, 47 IBLA 232 (May 13, 1980)

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claims have been abandoned and are void.

Andrew W. Berg, 47 IBLA 238 (May 13, 1980)

Departmental regulations 43 CFR Subpart 3109 and 3120.2-3, and sec. 603 of the Federal Land Policy and Management Act of 1976 provide ample authority for the Bureau of Land Management to require oil and gas lessees to agree to wilderness protection stipulations.

Emery Energy, Inc., 47 IBLA 284 (May 15, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Roy Tremayne, 47 IBLA 289 (May 15, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the service fee therefor is not paid to BLM until Nov. 13, 1979, the recordation date of the notice is Nov. 13, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 13, 1979, is not timely filed.

Loyal Dee Griggs, 47 IBLA 293 (May 15, 1980)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for a claim located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claim must be deemed abandoned and void.

David Mendenhall, 47 IBLA 298 (May 19, 1980)

Fleck Mining and Investment Co., 49 IBLA 187 (Aug. 6, 1980)

Gary Hansbrough, 50 IBLA 206 (Sept. 30, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Allen J. Maxwell, Mary A. Janusz, 47 IBLA 306 (May 19, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Jean L. Greene, 47 IBLA 309 (May 19, 1980)

Andy Syndbad, 48 IBLA 87 (May 29, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned and is void. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979.

William and Marie Blanchard, 47 IBLA 312 (May 19, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 11, 1979, and the service fee therefor is not paid to BLM until Nov. 20, 1979, the recordation date of the notice is Nov. 20, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 20, 1979, is not timely filed.

Frank Franich, 47 IBLA 332 (May 21, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

The "proper BLM office" is defined in 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). Where this latter regulation designates the Oregon State Office as the proper office, filing in a local Oregon office is not sufficient.

Timm Anderson, 47 IBLA 348 (May 21, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

The owner of an unpatented mining claim located prior to Oct. 21, 1976, must record the location on or before Oct. 22, 1979. Recordation is effected by filing a copy of the location notice or certificate with the proper ELM Office.

The owner of an unpatented mining claim located prior to Oct. 21, 1976, and recorded with ELM in the calendar year 1977, must file affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30 of the calendar year following the calendar year in which the claim was recorded with ELM and failure to comply with the regulations governing recordation of such instruments must result in a conclusive finding that the claim has been abandoned.

Where mining claimants attempt to record their claims on Oct. 28, 1977, which were located prior to Oct. 21, 1976, but do not submit the mandatory service fee, as required by 43 CFR 3833.1-2(d), until May 3, 1978, recordation of the claims is effective as of May 3, 1978, and the claimants are not required to file evidence of annual assessment work until Oct. 22, 1979.

W. Verne Knight, Eva M. Knight, 47 IBLA 351 (May 21, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the filing fee therefor is not paid to BLM until Mar. 10, 1980, the recordation date of the notice is Mar. 10, 1980.

Wilbur Martin, 47 IBLA 370 (May 21, 1980)

The Federal Land Policy and Management Act of 1976 does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

Sylvan S. Hewitt, Dennis Wallace, 47 IBLA 393 (May 22, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Where a copy of the notice or certificate of location is on file at the BLM Phoenix District Office in relation to trespass action and the \$5 filing fee is not received in the BLM Arizona State Office until after the deadline, the certificate of location is not timely filed and the mining claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Mitsuko Flick, 48 IBLA 1 (May 27, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the Post Office assured the claimant that the documents would reach the Oregon State Office by Oct. 22, 1979, will not excuse the late filing.

Norman E. Brooks, 48 IBLA 16 (May 27, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location and related material for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. File means being received and date stamped by the proper BLM office. Failure to so file is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Robert Willing et al., 48 IBLA 39 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode or placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner. A question as to the date of location is to be resolved according to state law, pursuant to 43 CFR 3833.0-5(b).

Larry Lahusen, Jay Coates, 48 IBLA 43 (May 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Ross W. Mathews, 48 IBLA 71 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Under 43 CFR 3833.2-1(a), the owner of a mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file constitutes abandonment of the claim and renders the claim void.

Johnnie Finnegan, Don F. Gordon, Carl Holder, 48 IBLA 79 (May 29, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office prior to Oct. 22, 1979. A copy of the location certificate, which is not an exact replica or machine copy of the recorded certificate, but which contains the same language and is filed timely will be accepted as complying with the laws and regulations.

Wilma Hartley, 48 IBLA 83 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode or placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute and abandonment of the claim by the owner.

Paul P. Rhodes, 48 IBLA 90 (May 29, 1980)

Where a claimant timely files notices of location for recordation of his mining claims and submits a sketch map and narrative description of the location of the claims sufficient to locate the claimed lands on the ground, and identifies the claims by section, township, range, meridian, and state, he has met the requirements of sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2(c) (5) and (6).

Robert H. Lawson, 48 IBLA 93 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

John Hudspeth, Floreine Hudspeth, 48 IBLA 99 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.2-1, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location and a copy of the recorded affidavit of assessment work or notice of intention to hold the claim, with the proper Bureau of Land Management Office

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

Helen E. Wallace, 48 IBLA 127 (May 30, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A document required to be filed on or before Oct. 22, 1979, and received by BLM on Jan. 8, 1980, is not timely filed.

James E. Cooper, 48 IBLA 175 (June 9, 1980)

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

Robert Alameda et al., 48 IBLA 178 (June 9, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), gives no authority to the Department of the Interior to accept for mining claim recordation documents submitted after the statutory time requirements as if they were timely filed in order to avoid the consequences of the statute.

John F. Sherwood, 48 IBLA 180 (June 9, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction

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or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper ELM office, of such instrument of recordation. Under 43 CFR 3833.1-2 there is no express requirement that a machine reproduction be provided. Accordingly, a handwritten duplicate of a notice of location is acceptable under the regulations.

W. C. Miles, 48 IBLA 214 (June 16, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Under 43 CFR 3833.2-1(a), the owner of a mining claim located on Federal lands on or before Oct. 21, 1976, must file with ELM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. Failure to so file constitutes abandonment of the claim.

A. J. Grady, 48 IBLA 218 (June 16, 1980)

"Fair market value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

P. E. M. Service, Inc., 48 IBLA 233 (June 17, 1980)

Northwestern Colorado Broadcasting Co., 49 IBLA 23 (July 15, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Joe Rapic, 48 IBLA 255 (June 26, 1980)

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FIFMA), 90 Stat. 2790. A claim under the townsite laws will be rejected where appellants have submitted no proof that they occupied the land prior to the effective date of FIFMA, Oct. 21, 1976, thus giving them a valid existing right which would have survived FIFMA.

Patsy Karl Neakok, Spiley A.C. Neakok, 48 IBLA 377 (July 11, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Dollie L. Glaab, 48 IBLA 404 (July 11, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Don R. Bird et al., 49 IBLA 94 (July 22, 1980)

Herb Ballou, 49 IBLA 225 (Aug. 12, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner.

Ross Weaver, 49 IBLA 111 (July 28, 1980)

Cripple Creek Exploration Corp., 49 IBLA 190 (Aug. 6, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The statute and regulations governing recordation of mining claims are mandatory and where a mining claimant contends that he mailed his notices of location along with other documents which were received by the Bureau of Land Management 1 day after the filing date, the claims are properly declared abandoned and void.

G. R. Marquardson, 49 IBLA 114 (July 28, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing in the Utah State Office rather than the Wyoming State Office is not sufficient.

Interstate Brick, 49 IBLA 125 (July 28, 1980)

Interstate Brick, 50 IBLA 107 (Sept. 17, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that appellant lost or misplaced the required documents and had to send away for new ones will not excuse late filing.

Gale E. Powell, 49 IBLA 173 (July 30, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Glen Hocking, 49 IBLA 217 (Aug. 11, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. The owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of mining claims are mandatory and where ELM has not received a notice of location, the claim is properly declared abandoned and void.

Margaret Covert, 50 IBLA 58 (Sept. 15, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the documents had been deposited in the mail and postmarked by the postal authorities Oct. 22, 1979, will not excuse the late filing.

Helen Holland et al., 50 IBLA 121 (Sept. 24, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

deemed conclusively to constitute an abandonment of the mining claim.

Clifford J. Kelch, 50 IBLA 127 (Sept. 24, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented millsite located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. The owner of an unpatented millsite, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of millsite claims are mandatory and where BLM has not received a notice of location, the claim is properly declared abandoned and void.

Wayne E. Clutis, 50 IBLA 379 (Oct. 22, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim must file a map, narrative, or sketch depicting the location of his mining claim or site. A BLM decision dated Aug. 22, 1980, effectively advising a claimant that his claims are void because no map has been filed within 30 days of July 16, 1979, will be set aside as erroneous where the file contains a map of the claims which is BLM date stamped Aug. 3, 1979.

George Phil Martinez, 51 IBLA 330 (Dec. 29, 1980)

ASSESSMENT WORK

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which the claim was recorded in the BLM office, the claim is properly deemed conclusively to have been abandoned.

Willene Minnier, 45 IBLA 1 (Jan. 8, 1980)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located before Oct. 21, 1976, is not supported annually on or before Dec. 31 of the calendar year following the calendar year he recorded the claim in the BLM office by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intention to abandon and that the failure to file the required statements with BLM was an oversight.

Jerry Cupper, 45 IBLA 215 (Jan. 30, 1980)

Under 43 CFR 3833.2-1(b) (1978), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, prior to Dec. 31 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

Robert W. Hansen, Federal Bentonite Co., 46 IBLA 93 (Feb. 28, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the date of location or the claim will be conclusively deemed to have been abandoned.

Betty and Clarence L. Guffey, 47 IBLA 175 (May 7, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid.

G. H. Monk, 47 IBLA 213 (May 13, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 2, 1979, and the service fee therefor is not paid to BLM until Oct. 29, 1979, the recordation date of the notice is Oct. 29, 1979.

Charles F. Seel, 47 IBLA 229 (May 13, 1980)

Where the owner of an unpatented mining claim located before Oct. 21, 1976, files a copy of the original notice of location in the calendar year 1976, he is required by 43 CFR 3833.2-1(a) to file proof of assessment work for the assessment year ending on Aug. 31, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

A mining claimant's failure to file timely evidence of annual assessment work is not excused by alleged tardiness of the State recorder's office in recording this information and returning a record copy to claimant, as a claimant is permitted under 43 CFR 3833.2-2(a) to satisfy the Federal filing requirements by submitting a duplicate of the assessment notice, even though it has not yet been filed for record with the State.

Harry J. Phillips, 47 IBLA 252 (May 13, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the service fee therefor is not paid to BLM until Nov. 13, 1979, the recordation date of the notice is Nov. 13, 1979.

Loyal Dee Griggs, 47 IBLA 293 (May 15, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 11, 1979, and the service fee therefor is not paid to BLM until Nov. 20, 1979, the recordation date of the notice is Nov. 20, 1979.

Frank Franich, 47 IBLA 332 (May 21, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the filing fee therefor is not paid to BLM until Mar. 10, 1980, the recordation date of the notice is Mar. 10, 1980.

Wilbur Martin, 47 IBLA 370 (May 21, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the date of location or the claim will be deemed conclusively to have been abandoned.

Where an appellant asserts on appeal that proof of labor was mailed timely to the Bureau of Land Management, but there exists no record of their receipt, the documents cannot be considered as filed.

Gary L. Barton, J. Marinelli, R. Nixon, 47 IBLA 386 (May 21, 1980)

Where the owner of an unpatented mining claim located prior to, but recorded with BLM after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Alice E. Deetz, 48 IBLA 59 (May 29, 1980)

Under 43 CFR 3833.2-1(a), the owner of a mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file constitutes abandonment of the claim and renders the claim void.

Johnnie Finnegan, Don E. Gordon, Carl Holder, 48 IBLA 79 (May 29, 1980)

Where the owner of an unpatented mining claim, located by a predecessor in 1977, fails to file an affidavit of assessment work as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(c), on or before Dec. 30 of the calendar year following the calendar

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

year in which the claim was located, the claim is properly deemed to have been abandoned.

White Star Foundation, Inc., 48 IBLA 96 (May 29, 1980)

Where the owners of unpatented mining claims located before Oct. 21, 1976, fail to file copies of the original notices of location with the proper BLM office on or before Oct. 22, 1979, their claims are properly held to be abandoned and void.

Jean C. Leffer et al., 48 IBLA 103 (May 29, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold on or before Oct. 22, 1979, his claim is deemed conclusively to be abandoned and to be null and void.

Kenneth K. Parker, 48 IBLA 129 (May 30, 1980)

Century XXI Mining, Inc., 49 IBLA 166 (July 30, 1980)

Under 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

Ronald Foraker, 48 IBLA 132 (May 30, 1980)

Anna Schalkewicz, 48 IBLA 134 (May 30, 1980)

Zoes Associates, 50 IBLA 164 (Sept. 30, 1980)

A claimant who has located a mining claim in April 1975 and thereafter records his notice of location simultaneously with his filing of evidence of assessment work in May 1978 has satisfied the requirements of 43 CFR 3833.2-1(a) by filing evidence of assessment work on or before Dec. 30, 1979.

Robert W. Perkin, 48 IBLA 209 (June 16, 1980)

Under 43 CFR 3833.2-1(a), the owner of a mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. Failure to so file constitutes abandonment of the claim.

A. J. Grady, 48 IBLA 218 (June 16, 1980)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed conclusively to have been abandoned.

Margaret J. Wilson, 49 IBLA 228 (Aug. 12, 1980)

James V. Brady, 51 IBLA 361 (Dec. 29, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording with BLM of the copy of the notice or certificate of location, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Milburn Downey, Eugene A. Cunningham, 50 IBLA 212 (Sept. 30, 1980)

Where the owners of an unpatented mining claim located prior to Oct. 21, 1976, fail to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, having filed a copy of the notice of location with BLM during calendar year 1978, the claim is properly deemed to be abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

Where appellants assert on appeal that evidence of assessment work was timely mailed to BLM, but there exists no record of its receipt the documents cannot be considered as filed.

Donald D. Vesely et al., 50 IBLA 277 (Oct. 6, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void.

Pearl Kelly, 51 IBLA 185 (Dec. 2, 1980)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim, or the claim must be presumed abandoned and void.

Santa Monica Hospital Medical Center Foundation, 51 IBLA 194 (Dec. 5, 1980)

CONVEYANCES

Where evidence is persuasive that certain land was included in a homestead patent as the consequence of an error in description, and other land was settled, improved and occupied for several decades thereafter, an application to reform the patent will be allowed where the concerned administrative agencies do not object, the Government's interests are not unduly prejudiced, no third party's rights are affected, and substantial equities of the applicant will thereby be preserved.

Mantle Ranch Corp., 47 IBLA 17 (Apr. 11, 1980)

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FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

LEASES

Where BLM purportedly has appraised the property on which appellant allegedly has an occupancy lease issued pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), and appellant submits evidence which raises a question as to whether the correct property was appraised, supported by a statement from an independent real estate appraiser, and presents other data which challenges the validity of the appraisal, the State Office decision will be vacated and the case remanded to BLM for consideration of whether a new appraisal is warranted.

James T. Brown, 46 IBLA 265 (Mar. 27, 1980)

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Hyatt Lake Homeowners Ass'n, 48 IBLA 159 (June 9, 1980)

PERMITS

The effect of a timely filed notice of appeal is to suspend the authority of the deciding official to exercise jurisdiction relating to the subject of the appeal. It does not have the effect, however, of suspending the authority of BLM to act on matters which, while related to the subject of the appeal, are nevertheless functionally independent therefrom.

Failure to pay the annual rental for a special land use permit constitutes sufficient ground for termination of the use. 43 CFR 2920.4(a).

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (2) (1976), if an unpatented mining claim located before Oct. 21, 1976, is not supported annually on or before Dec. 31 of the calendar year following the calendar year he recorded the claim in the BLM office by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intention to abandon and that the failure to file the required statements with BLM was an oversight.

Jerry Copper, 45 IBLA 215 (Jan. 30, 1980)

Where regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976 require reference to the Bureau of Land Management serial number under which a mining claim is recorded for future recordings, a claimant fails to include the number when he files a notice of assessment work, and he is specifically informed of this and other requirements, but fails to furnish the number, the filing is unacceptable, and failure to comply with the filing requirements constitutes abandonment of the claim, as provided by the Act.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The owner of an unpatented mining claim located prior to Oct. 21, 1976, has until Oct. 22, 1979, to record the location. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned.

H. L. Smith, 46 IBLA 62 (Feb. 22, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Nov. 7, 1979, the recordation date of the notice of location is Nov. 7, 1979. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Nov. 7, 1979, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claim must be deemed abandoned and void.

Nevada Pacific Co., Inc., 46 IBLA 208 (Mar. 24, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim was submitted to BLM for recordation on Oct. 22, 1979, the deadline date, and the filing fee therefore is not paid to BLM until after the deadline for filing had passed, the mining claim must be deemed abandoned and void.

L. Leon Jennings, Mansfield L. Jennings, Gilbert M. Jennings, 47 IBLA 47 (Apr. 14, 1980)

R. L. Durrant, Nod Mulville, B. E. Karn, 47 IBLA 208 (May 13, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid.

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year, or a notice of intention to hold the mining claim.

Failure to comply with the regulations governing recordation of notice of location or assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

G. H. Monk, 47 IBLA 213 (May 13, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 2, 1979, and the service fee therefor is not paid to BLM until Oct. 29, 1979, the recordation date of the notice is Oct. 29, 1979.

Charles P. Seel, 47 IBLA 229 (May 13, 1980)

Where the owner of an unpatented mining claim located before Oct. 21, 1976, files a copy of the original notice of location in the calendar year 1978, he is required by 43 CFR 3833.2-1(a) to file proof of assessment work for the assessment year ending on Aug. 31, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

A mining claimant's failure to file timely evidence of annual assessment work is not excused by alleged tardiness of the State recorder's office in recording this information and returning a record copy to claimant, as a claimant is permitted under 43 CFR 3833.2-2(a) to satisfy the Federal filing requirements by submitting a duplicate of the assessment notice, even though it has not yet been filed for record with the State.

Harry J. Phillips, 47 IBLA 252 (May 13, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where certificates of location of mining claims are submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Feb. 25, 1980, the recordation date of the notices of location is Feb. 25, 1980. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Feb. 25, 1980, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claims must be deemed abandoned and void.

Cecil V. Clifford, Jr., 47 IBLA 262 (May 13, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the service fee therefor is not paid to BLM until Nov. 13, 1979, the recordation date of the notice is Nov. 13, 1979.

Loyal Des Griggs, 47 IBLA 293 (May 15, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of mining claims, were submitted to BLM for recordation and the filing fees therefor were not paid to BLM until after the deadline (90 days after the date of location) had passed, the mining claims must be deemed abandoned and void.

Virginia Edwards, 47 IBLA 301 (May 19, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 11, 1979, and the service fee therefor is not paid to BLM until Nov. 20, 1979, the recordation date of the notice is Nov. 20, 1979.

Frank Franich, 47 IBLA 332 (May 21, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, must record the location on or before Oct. 22, 1979. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM Office.

The owner of an unpatented mining claim located prior to Oct. 21, 1976, and recorded with BLM in the calendar year 1977, must file affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30 of the calendar year following the calendar year in which the claim was recorded with ELM and failure to comply with the regulations governing recordation of such instruments must result in a conclusive finding that the claim has been abandoned.

Where mining claimants attempt to record their claims on Oct. 28, 1977, which were located prior to Oct. 21, 1976, but do not submit the mandatory service fee, as required by 43 CFR 3833.1-2(d), until May 3, 1978, recordation of the claims is effective as of May 3, 1978, and the claimants are not required to file evidence of annual assessment work until Oct. 22, 1979.

W. Verne Knight, Eva M. Knight, 47 IBLA 351 (May 21, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the filing fee therefor is not paid to BLM until Mar. 10, 1980, the recordation date of the notice is Mar. 10, 1980.

Wilbur Martin, 47 IBLA 370 (May 21, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The owner of an unpatented mining claim located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location and file a copy of the recorded affidavit of assessment work or notice of intention to hold. Recordation is effected by filing a copy of the location notice or certificate with the proper ELM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

Bernard A. Schmid, 48 IBLA 48 (May 29, 1980)

Where the owner of an unpatented mining claim located prior to, but recorded with BLM after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Alice E. Deetz, 48 IBLA 59 (May 29, 1980)

Where the owner of an unpatented mining claim, located by a predecessor in 1977, fails to file an affidavit of assessment work as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(c), on or before Dec. 30 of the calendar year following the calendar year in which the claim was located, the claim is properly deemed to have been abandoned.

White Star Foundation, Inc., 48 IBLA 96 (May 29, 1980)

Where the owners of unpatented mining claims located before Oct. 21, 1976, fail to file copies of the original notices of location with the proper BLM office on or before Oct. 22, 1979, their claims are properly held to be abandoned and void.

Jean C. Lepper et al., 48 IBLA 103 (May 29, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold on or before Oct. 22, 1979, his claim is deemed conclusively to be abandoned and to be null and void.

Kenneth K. Parker, 48 IBLA 129 (May 30, 1980)

Century XXI Mining, Inc., 49 IBLA 166 (July 30, 1980)

A claimant who has located a mining claim in April 1975 and thereafter records his notice of location simultaneously with his filing of evidence of assessment work in May 1978 has satisfied the requirements of 43 CFR 3833.2-1(a) by filing evidence of assessment work on or before Dec. 30, 1979.

Robert W. Ferkin, 48 IBLA 209 (June 16, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. A mining claimant who chooses the Postal Service as his means of delivery must accept the responsibility and bear the consequences of loss or untimely delivery of his filings.

Edward P. Murphy, 48 IBLA 211 (June 16, 1980)

Under 43 CFR 3833.2-1(a), the owner of an unpatented mining claim must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of each calendar year following the year of recordation of the claim with BLM, or the claim will be conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Victor DeLange, 48 IBLA 222 (June 16, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where a mining claim is located on Aug. 20, 1970, and recorded with BLM on Nov. 14, 1978, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

A. W. Josue, 48 IBLA 225 (June 16, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Laura Mae Hopper, 48 IBLA 253 (June 26, 1980)

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to comply with the regulations governing recordation of notices of location or the filing of evidence of assessment work or a notice of intention to hold mining claim must result in a conclusive finding that the mining claim has been abandoned and is void.

Dollie L. Glaab, 48 IBLA 404 (July 11, 1980)

Max Weiss, 49 IBLA 332 (Aug. 25, 1980)

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FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Mark G. Jones, 49 IBLA 378 (Sept. 5, 1980)

The owner of an unpatented mining claim located on Federal lands excluding lands within a unit of the National Park System, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, after Oct. 21, 1976, shall, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Where the claimant does not do so, the claims are deemed abandoned and properly declared void.

Don and Mary L. Clark, 49 IBLA 11 (July 15, 1980)

The owner of mining claims located prior to Oct. 21, 1976, must file evidence of annual assessment work performed on the claims during the preceding assessment year, or, where appropriate, notices of intention to hold the claims, no later than on or before Oct. 22, 1979, or the claims are properly declared abandoned and void.

"Preceding assessment year." The "preceding assessment year" is the assessment year most recently completed. Thus, the requirement that evidence of annual assessment work completed during the "preceding assessment year" be filed on or before Oct. 22, 1979, concerns the assessment year ending at noon on Sept. 1, 1979.

A mining claimant may file a notice of intention to hold its mining claims in lieu of evidence of annual assessment work performed thereon only where the obligation to perform the annual assessment work has been suspended or deferred or has not yet accrued. Where the record indicates no such circumstances and shows to the contrary that the claimant was required to and did perform this work in the preceding assessment year, filing notices of intention will not suffice.

A notice of intention to hold a group of mining claims must meet the requirements set out at 43 CFR 3833.2-3(a), and must include, *inter alia*, a clear statement of the reason why the annual assessment work was not performed. This requirement is impossible of satisfaction where the claimant in fact did the assessment work.

A failure to file evidence of annual assessment work for the preceding assessment year is not excused by 43 CFR 3833.4(b), which provides that a filing which complies with FLPMA may not be deemed invalid because of its failure to meet the requirements of other laws.

Alaskamin Co., 49 IBLA 43 (July 21, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management Office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The filing of the notice of location of a mining claim does not meet the requirement for filing a notice of intention to hold the mining claim.

Don Sagmoen, Perry Adkison, Ward I. Jones, 50 IBLA 84 (Sept. 17, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed evidence of assessment work performed during the preceding assessment year or a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

John J. Schnabel, 50 IBLA 201 (Sept. 30, 1980)

The owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Where the claimant does not do so the claims are deemed abandoned and properly declared void.

Milburn Downey, Eugene A. Cunningham, 50 IBLA 212 (Sept. 30, 1980)

Where the owner of unpatented mining claims located before Oct. 21, 1976, files copies of the notices of location of these claims prior to the Oct. 22, 1979, deadline for so doing, but fails to file evidence of annual assessment work during the preceding assessment year on or before this deadline, the claims are properly declared abandoned and void.

Stanley Bishop, 50 IBLA 371 (Oct. 21, 1980)

Joseph V. Dodge, d.b.a. Rocky Mountain Mineral Co., 50 IBLA 394 (Oct. 24, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, was required to file with ELM evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

Peter and Rinda Hasson, 51 IBLA 17 (Oct. 28, 1980)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1978, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30, 1979, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

Michael Jon McFarland, 51 IBLA 173 (Nov. 26, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void.

Fearl Kelly, 51 IBLA 185 (Dec. 2, 1980)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed conclusively to have been abandoned.

James V. Brady, 51 IBLA 361 (Dec. 29, 1980)

RECORDATION OF MINING CLAIMS AND ABANDONMENT

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with ELM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of Location." The date of location of a mining claim is determined in accordance with the law of the State where the claim is situated. Under Washington law, it is the date specified on the notice of location filed with the local recorder's office.

The date of location of a mining claim may not be changed by altering this date on the copy of the notice of location filed with ELM so that it reflects a date different than that in the original notice.

P. E. S. Mining Co., 45 IBLA 115 (Jan. 23, 1980)

Where a mining claimant submits a copy of a notice of location in the ELM's Riverside, California, District Office, for a claim located after Oct. 21, 1976, he has not complied with 43 CFR 3833.1-2(b), even though the material was submitted in the District Office before the expiration of the 90-day deadline, as the notice has not been filed in the "proper ELM office," which is the ELM California State Office in Sacramento, as expressly provided by 43 CFR 3833.0-5(g) and 1821.2-1(d). Where the District Office forwards the information to the State Office but it does not arrive until after the 90-day deadline has passed, owing to its extremely late submission to the District Office, it is untimely, and the claim is properly declared abandoned and void under 43 CFR 3833.4(a).

C. F. Linn, 45 IBLA 156 (Jan. 23, 1980)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located before Oct. 21, 1976, is not supported annually on or before Dec. 31 of the calendar year following the calendar year he recorded the claim in the BLM office by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intention to abandon and that the failure to file the required statements with ELM was an oversight.

Jerry Cuifer, 45 IBLA 215 (Jan. 30, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

If a mining claim is not timely recorded in accordance with the recordation provisions in the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), it is conclusively deemed abandoned and is void as a matter of law. A claimant who has no interest in maintaining a mining claim should not record it with the Bureau of Land Management.

Where a mining claimant timely tendered payment to cover service fees for recording 70 mining claim notices of location, but also included four additional mining claim notices which she did not intend to maintain but filed merely for informational purposes, and on appeal she clarifies her intent concerning the four claims and unclear markings on maps which were to show that the four claims were "canceled," the payment and filing will be deemed to have been timely made as to the 70 claims if payment is subsequently made pursuant to a notice given.

Ann M. Warnke, 45 IBLA 305 (Feb. 6, 1980)

"Copy of the Official Record of the Notice or Certificate of Location." Under the revised definition of the term at 43 CFR 3833.0-5(i) (1979), a duplicate of a notice of location which has been filed with the local recorder is a "copy of the official record of the notice or certificate of location," even though it is not stamped by the local recorder and does not include a reference to the local record, and is therefore acceptable under 43 CFR 3833.1-2(b) if tendered within 90 days of the date of location.

James E. Strong, 45 IBLA 386 (Feb. 13, 1980)

Where regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976 require reference to the Bureau of Land Management serial number under which a mining claim is recorded for future recordings, a claimant fails to include the number when he files a notice of assessment work, and he is specifically informed of this and other requirements, but fails to furnish the number, the filing is unacceptable, and failure to comply with the filing requirements constitutes abandonment of the claim, as provided by the Act.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, has until Oct. 22, 1979, to record the location. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned.

H. L. Smith, 46 IBLA 62 (Feb. 22, 1980)

Under 43 U.S.C. § 1744(b) (1976) the owner of an unpatented mining claim located before Oct. 21, 1976, must file with BLM, a copy of the notice of location before Oct. 22, 1979, or the claim will be conclusively deemed to have been abandoned under 43 U.S.C. § 1744(c). Mining claimants are not relieved of the requirement to timely file their documents where such documents may have been lost in the mail.

Where an unpatented mining claim is located after Oct. 21, 1976, a claimant has 90 days from the date of the new location to file with BLM a copy of the notice

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

of location and if he does so file, ELM should proceed with recordation of the new claim.

Everett Yount, 46 IBLA 74 (Feb. 22, 1980)

Where a mining claimant attempts to file notices of location for six claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only four of such claims, ELM shall require the claimant to select four claims to which the money tendered shall be applied. The remaining two claims are properly declared abandoned and void in accordance with 43 CFR 3833.4.

Robert I. Steele, 46 IBLA 80 (Feb. 22, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to ELM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Nov. 7, 1979, the recordation date of the notice of location is Nov. 7, 1979. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Nov. 7, 1979, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claim must be deemed abandoned and void.

Nevada Pacific Co., Inc., 46 IBLA 208 (Mar. 24, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

John Walter Chaney, 46 IBLA 229 (Mar. 27, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Beryl Rhodes, 46 IBLA 287 (Mar. 31, 1980)

The owner of an unpatented mining claim located before Oct. 21, 1976, has until Oct. 22, 1979, in which to record his/her notice of location with BLM. However, if he/she elects to record in 1977, he/she must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1978, and each year thereafter, or the claim will be conclusively deemed to have been abandoned.

Josephine M. Buchen, 46 IBLA 298 (Mar. 31, 1980)

Lo Lo M. Cosky, 46 IBLA 363 (Apr. 8, 1980)

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FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Clarence W. and Anna F. Owens, 47 IBLA 149 (May 6, 1980)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

The failure to file such instruments as are required by secs. 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

Phyllis Wood et al., 46 IBLA 309 (Apr. 4, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim, located after Oct. 21, 1976, is properly deemed abandoned and void.

A question as to the date of location of a mining claim is to be resolved according to state law, pursuant to 43 CFR 3833.0-5(h).

E. J. Holmes, 46 IBLA 316 (Apr. 4, 1980)

Under 43 CFR 3833.1-2 the owner of an unpatented mining claim, millsite, or tunnel site located on or before Oct. 21, 1976, must file (file shall mean being received and date stamped by the proper BLM office) an official copy of the notice of location with the proper BLM office on or before Oct. 22, 1979, or the claim will be conclusively deemed to have been abandoned under 43 CFR 3833.4. Mining claimants are not relieved of the requirement to file timely their documents when they mail them, as the documents cannot be considered as filed until they are received by the proper office of the Bureau of Land Management.

Carl Oberg, 46 IBLA 319 (Apr. 4, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Glen J. McCrorey and Deloris McCrorey, 46 IBLA 355 (Apr. 8, 1980)

43 CFR 3833.1-2(a) states that the owner of an unpatented mining claim, millsite, or tunnel site on Federal lands on or before Oct. 21, 1976, shall file (file shall mean being received and date stamped by the proper BLM office) on or before Oct. 22, 1979, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. The depositing of a copy of the document in the mail

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RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

does not constitute a "filing" within the context of the regulation.

Wayne Van Dyke, 46 IBLA 358 (Apr. 8, 1980)

Earl A. Tenley, 47 IBLA 200 (May 7, 1980)

Darleen Porter, 48 IBLA 55 (May 29, 1980)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1977, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

Northwest Mining & Mercantile, Inc., 46 IBLA 360 (Apr. 8, 1980)

Geomet Exploration, Inc., 47 IBLA 135 (Apr. 30, 1980)

Robert R. Eisenman, 50 IBLA 145 (Sept. 26, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1, the owner of an unpatented mining claim located in calendar year 1977, must file an affidavit of assessment work or a notice of intention to hold the mining claim on or before Dec. 30 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned and will be declared void.

Vernon W. and Barbara R. Johnson, 47 IBLA 43 (Apr. 11, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim was submitted to BLM for recordation on Oct. 22, 1979, the deadline date, and the filing fee therefore is not paid to BLM until after the deadline for filing had passed, the mining claim must be deemed abandoned and void.

L. Leon Jennings, Mansfield L. Jennings, Gilbert M. Jennings, 47 IBLA 47 (Apr. 14, 1980)

E. L. Durrant, Nod Mulville, B. E. Karp, 47 IBLA 208 (May 13, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a locatable mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

George Toole, 47 IBLA 89 (Apr. 21, 1980)

Arthur W. Schmidt, 47 IBLA 143 (May 6, 1980)

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RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The owner of an unpatented mining claim, located after Oct. 21, 1976, must file within 90 days after the date of location, in the proper BLM office, a copy of the certificate of location of the claim.

The failure to file the instruments required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, constitutes an abandonment of the mining claim, and the claim is properly deemed to be void.

Eric Murray, 47 IBLA 112 (Apr. 28, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official notice of location or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, failing which the claim is properly deemed abandoned and void.

Sheldon Margen, 47 IBLA 118 (Apr. 28, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Timely transmittal of the documents to the wrong BLM Office does not meet the requirements where the documents are not filed in the proper office timely.

John S. Henson, 47 IBLA 129 (Apr. 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A document received by BLM on Oct. 24, 1979, is not timely filed.

Dwight F. Kennedy, 47 IBLA 132 (Apr. 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing in a BLM District Office rather than the designated BLM State Office is not sufficient.

John Sloan, 47 IBLA 146 (May 6, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Fred A. Dunham, 47 IBLA 152 (May 6, 1980)

Edward G. Taylor, 47 IBLA 286 (May 15, 1980)

Lela M. Ostern, 49 IBLA 146 (July 30, 1980)

George J. Burnett, 50 IBLA 124 (Sept. 24, 1980)

Lorraine Mohr, 50 IBLA 147 (Sept. 26, 1980)

County of Imperial, 51 IBLA 250 (Dec. 15, 1980)

Stephen Greist, 51 IBLA 287 (Dec. 17, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Documents filed in the proper BLM office after that date cannot be accepted even if they were erroneously transmitted to the Montana Department of Natural Resources before that date and were on file with the county office.

Jeanne G. Cwens, 47 IBLA 172 (May 7, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

M. E. Rogers, 47 IBLA 196 (May 7, 1980)

Edwin Forsberg, 47 IBLA 235 (May 13, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Documents received in the Bureau of Land Management's Burns, Oregon, District Office on Oct. 22, 1979,

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RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

are not timely filed in the proper BLM office, where pursuant to 43 CFR 1821.2-1(d), the proper office with jurisdiction over the area in which the claim is located is the Oregon State Office in Portland, and the documents are not received in the State Office until after Oct. 22, 1979.

Floyd Zaiger, 47 IBLA 204 (May 7, 1980)

The owner of an unpatented mining claim on Federal lands located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location in the proper BLM office. Recordation is effected by filing a copy of the official record of the location notice or certificate with the proper BLM office and payment of a service charge of \$5 per claim.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid.

Failure to comply with the regulations governing recordation of notice of location or assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

G. H. Monk, 47 IBLA 213 (May 13, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Appellant's attempt to mail the documents on Saturday, Oct. 20, 1979, will not excuse late filing even though he was told by the Post Office that the documents would be in Phoenix by Monday, Oct. 22, 1979.

Ray F. Coffee, 47 IBLA 217 (May 13, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The requirements are not met where documents are not received by the proper BLM office until Oct. 25, 1979, even though the claimant had the envelope date stamped by a different BLM office on Oct. 22, 1979, before mailing it to the proper office.

Santa Fe Nuclear, Inc., 47 IBLA 220 (May 13, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 2, 1979, and the

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

service fee therefor is not paid to ELM until Oct. 29, 1979, the recordation date of the notice is Oct. 29, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Oct. 29, 1979, is not timely filed.

Charles P. Seel, 47 IBLA 229 (May 13, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned and is void. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, accompanied by the proper fee.

Carl A. Forstrom, 47 IBLA 232 (May 13, 1980)

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claims have been abandoned and are void.

Andrew W. Berg, 47 IBLA 238 (May 13, 1980)

Where the owner of an unpatented mining claim located before Oct. 21, 1976, files a copy of the original notice of location in the calendar year 1978, he is required by 43 CFR 3833.2-1(a) to file proof of assessment work for the assessment year ending on Aug. 31, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

A mining claimant's failure to file timely evidence of annual assessment work is not excused by alleged tardiness of the State recorder's office in recording this information and returning a record copy to claimant, as a claimant is permitted under 43 CFR 3833.2-2(a) to satisfy the Federal filing requirements by submitting a duplicate of the assessment notice, even though it has not yet been filed for record with the State.

Harry J. Phillips, 47 IBLA 252 (May 13, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where certificates of location of mining claims are submitted to ELM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to ELM until Feb. 25, 1980, the recordation date of the notices of location is Feb. 25, 1980. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Feb. 25, 1980, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to

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RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Oct. 21, 1976, and the mining claims must be deemed abandoned and void.

Cecil V. Clifford, Jr., 47 IBLA 262 (May 13, 1980)

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Alva F. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Where a mining claim is located on July 4, 1976, and recorded with BLM on Jan. 23, 1978, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. Evidence of assessment work received on Dec. 3, 1979, is not filed timely and the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

Jim Adams, 47 IBLA 281 (May 15, 1980)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Where a mining claimant submits a copy of a notice of location to the BLM District Office at Burley, Idaho, for a claim located prior to Oct. 21, 1976, he has not complied with 43 CFR 3833.1-2(a), even though the material was submitted to the District Office before the expiration of the statutory deadline of Oct. 22, 1979, as the location notice has not been filed in the "proper BLM office," which is the BLM Idaho State Office, in Boise, as expressly provided by 43 CFR 3833.0-5(g) and 1821.2-1(d), and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

Roy Tremayne, 47 IBLA 289 (May 15, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the service fee therefor is not paid to BLM until Nov. 13,

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1979, the recordation date of the notice is Nov. 13, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 13, 1979, is not timely filed.

Loyal Dee Griggs, 47 IBLA 293 (May 15, 1980)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Feth Mallory, 47 IBLA 296 (May 19, 1980)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for a claim located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claim must be deemed abandoned and void.

David Mendenhall, 47 IBLA 298 (May 19, 1980)

Fleck Mining and Investment Co., 49 IBLA 187 (Aug. 6, 1980)

Gary Hansbrough, 50 IBLA 206 (Sept. 30, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of mining claims, were submitted to BLM for recordation and the filing fees therefor were not paid to BLM until after the deadline (90 days after the date of location) had passed, the mining claims must be deemed abandoned and void.

Virginia Edwards, 47 IBLA 301 (May 19, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Allen J. Maxwell, Mary A. Janusz, 47 IBLA 306 (May 19, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Jean L. Greene, 47 IBLA 309 (May 19, 1980)

Andy Synghad, 48 IBLA 87 (May 29, 1980)

A. J. Grady, 48 IBLA 218 (June 16, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned and is void. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979.

William and Marie Blanchard, 47 IBLA 312 (May 19, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 11, 1979, and the service fee therefor is not paid to BLM until Nov. 20, 1979, the recordation date of the notice is Nov. 20, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 20, 1979, is not timely filed.

Frank Franich, 47 IBLA 332 (May 21, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a

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copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. A certificate of location received after Oct. 22, 1979, at the wrong BLM office is not timely filed and the mining claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

James H. Wardle, 47 IBLA 345 (May 21, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

The "proper BLM office" is defined in 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). Where this latter regulation designates the Oregon State Office as the proper office, filing in a local Oregon office is not sufficient.

Tim Anderson, 47 IBLA 348 (May 21, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, must record the location on or before Oct. 22, 1979. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM Office.

The owner of an unpatented mining claim located prior to Oct. 21, 1976, and recorded with BLM in the calendar year 1977, must file affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30 of the calendar year following the calendar year in which the claim was recorded with BLM and failure to comply with the regulations governing recordation of such instruments must result in a conclusive finding that the claim has been abandoned.

Where mining claimants attempt to record their claims on Oct. 28, 1977, which were located prior to Oct. 21, 1976, but do not submit the mandatory service fee, as required by 43 CFR 3833.1-2(d), until May 3, 1978, recordation of the claims is effective as of May 3, 1978, and the claimants are not required to file evidence of annual assessment work until Oct. 22, 1979.

W. Verne Kight, Eva M. Kight, 47 IBLA 351 (May 21, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the location of the mining claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Anna M. Vance, 47 IBLA 357 (May 21, 1980)

Elsie Codd, 51 IBLA 43 (Oct. 30, 1980)

Ed Wardrobe, 51 IBLA 45 (Oct. 30, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact the Post Office returned mail enclosing the documents to the claimant because the envelope did not conform to postal requirements affords no basis for relief where the documents subsequently were received by BLM after Oct. 22, 1979, as the statute gives no authority for waiving the late filing.

Tom Phelps, 47 IBLA 360 (May 21, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the filing fee therefor is not paid to BLM until Mar. 10, 1980, the recordation date of the notice is Mar. 10, 1980.

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it properly is declared abandoned and void.

Wilbur Martin, 47 IBLA 370 (May 21, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned.

Where a claimant is not required to do any assessment work under the general mining laws, but is required nevertheless to file under 43 CFR 3833.2-1(c), he must file a notice of intention to hold the claims in lieu of an affidavit of assessment work performed.

William J. Walker, Lewis Sandberg, 47 IBLA 389 (May 22, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

The Federal Land Policy and Management Act of 1976 does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

Sylvan S. Hewitt, Dennis Wallace, 47 IBLA 393 (May 22, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Where a copy of the notice or certificate of location is on file at the BLM Phoenix District Office in relation to trespass action and the \$5 filing fee is not received in the BLM Arizona State Office until after the deadline, the certificate of location is not timely filed and the mining claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Mitsuko Flick, 48 IBLA 1 (May 27, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the Post Office assured the claimant that the documents would reach the Oregon State Office by Oct. 22, 1979, will not excuse the late filing.

Norman E. Brooks, 48 IBLA 16 (May 27, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location and related material for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. File means being received and date stamped by the proper BLM office. Failure to so file is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Robert Willing et al., 48 IBLA 39 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode or placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner. A question as to the date of location is to be resolved according to state law, pursuant to 43 CFR 3833.0-5(b).

Larry Lahusen, Jay Coates, 48 IBLA 43 (May 29, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location and file a copy of the recorded affidavit of assessment work or notice of intention to hold. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Bernard A. Schmid, 48 IBLA 48 (May 29, 1980)

Where the owner of an unpatented mining claim located prior to, but recorded with BLM after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Alice E. Deetz, 48 IBLA 59 (May 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Ross W. Mathews, 48 IBLA 71 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Johnnie Finnegan, Don E. Gordon, Carl Holder, 48 IBLA 79 (May 29, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office prior to Oct. 22, 1979. A copy of the location certificate, which is not an exact replica or machine copy of the recorded certificate, but which contains the same language and is filed timely will be accepted as complying with the laws and regulations.

Wilma Hartley, 48 IBLA 83 (May 29, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode or placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute and abandonment of the claim by the owner.

Paul E. Rhodes, 48 IBLA 90 (May 29, 1980)

Where a claimant timely files notices of location for recordation of his mining claims and submits a sketch map and narrative description of the location of the claims sufficient to locate the claimed lands on the ground, and identifies the claims by section, township, range, meridian, and state, he has met the requirements of sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2(c) (5) and (6).

Robert H. Lawson, 48 IBLA 93 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

John Hudspeth, Floreine Hudspeth, 48 IBLA 99 (May 29, 1980)

Edward W. Kramer, 51 IBLA 294 (Dec. 17, 1980)

Where the owners of unpatented mining claims located before Oct. 21, 1976, fail to file copies of the original notices of location with the proper BLM office on or before Oct. 22, 1979, their claims are properly held to be abandoned and void.

Jean C. Lepper et al., 48 IBLA 103 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.2-1, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location and a copy of the recorded affidavit of assessment work or notice of intention to hold the claim, with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

Heleen E. Wallace, 48 IBLA 127 (May 30, 1980)

The owner of a mining claim located on or before Oct. 21, 1976, had until Oct. 22, 1979, to record a copy of the location notice with Bureau of Land Management and pay the required service fee, and where the fee was not paid 43 CFR 3833.1-2(d) requires that the notice of location be returned as unacceptable.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to timely file an instrument required by

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

43 CFR 3833.1-2 constitutes an abandonment of the mining claim, and it is deemed to be void.

George B. Flewelling, 48 IELA 141 (May 30, 1980)

Under 43 U.S.C. § 1744(h) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A document required to be filed on or before Oct. 22, 1979, and received by BLM on Jan. 8, 1980, is not timely filed.

James E. Cooper, 48 IBLA 175 (June 9, 1980)

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

Robert Alameda et al., 48 IBLA 178 (June 9, 1980)

Under 43 U.S.C. § 1744(h) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), gives no authority to the Department of the Interior to accept for mining claim recordation documents submitted after the statutory time requirements as if they were timely filed in order to avoid the consequences of the statute.

John F. Sherwood, 48 IBLA 180 (June 9, 1980)

George L. Harrison, 49 IBLA 157 (July 30, 1980)

Under 43 CFR 3833.2-1(a) and 3833.4(a), the owner of an unpatented mining claim located before Oct. 21, 1976, notice of which is recorded with BLM in the calendar year 1977, must file an affidavit of assessment work or a notice of intention to hold the claim on or before Dec. 30 of the following calendar year, 1978,

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

or the claim will be conclusively deemed to have been abandoned.

Betty Norton, 48 IELA 184 (June 9, 1980)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744(h) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, within 90 days after the date of location of such claim, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner. The "date of location" is determined by reference to the law of the state in which the claim is situated.

C. A. Gussman, 48 IELA 193 (June 9, 1980)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(h) (1976) and 43 CFR 3833.1-2, the owner or owners of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to file will conclusively be deemed an abandonment of the claim and it shall be void.

Lowell Pecker, Billie Peterson, 48 IELA 203 (June 16, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. Under 43 CFR 3833.1-2 there is no express requirement that a machine reproduction be provided. Accordingly, a handwritten duplicate of a notice of location is acceptable under the regulations.

W. C. Miles, 48 IELA 214 (June 16, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Joe Ropic, 48 IBLA 255 (June 26, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b) and 3833.4, the owner of an unpatented mining claim located after Oct. 21, 1976, shall file within 90 days after the date of location in the proper BLM office a copy of the official record of the notice or certificate of location, or the claim must be deemed abandoned and void.

James White, 48 IBLA 346 (July 3, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Armando Majalca, 48 IBLA 351 (July 11, 1980)

Failure to comply with the regulations governing recordation of notices of location or the filing of evidence of assessment work or a notice of intention to hold mining claim must result in a conclusive finding that the mining claim has been abandoned and is void.

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Dollie L. Glaab, 48 IBLA 404 (July 11, 1980)

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio, and an attempted recordation of such mining claims is properly refused by the Bureau of Land Management.

Jonathan Carr, 49 IBLA 17 (July 15, 1980)

Under 43 U.S.C. § 1744 (1976) if the owner of a mining claim located on or before Oct. 21, 1976, does not file a copy of the recorded notice or certificate of location by Oct. 22, 1979, the claim must be deemed abandoned and void.

Frank Otegui, 49 IBLA 40 (July 21, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Don R. Bird et al., 49 IBLA 94 (July 22, 1980)

Herb Ballou, 49 IBLA 225 (Aug. 12, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The owner of an unpatented mining claim located after Oct. 21, 1976, must file a copy of the certificate or notice of location of the claim with ELM within 90 days of the date of location of the claim, failing which ELM properly rejects the untimely tendered document and declares the claim abandoned and void.

Copies of mining claim certificates or notices of location which are required to be filed within 90 days of the date of location of a claim are not timely filed where they are placed in the mail prior to the deadline but are not received or date stamped by ELM until after the deadline.

Where a mining claimant merely asserts that because of a 9-day difference between the posting of an envelope and the date received stamp of ELM, ELM may have mishandled notices of location submitted in attempted compliance with the requirements of 43 CFR 3833.1-2(b), allegedly causing them to be date stamped by ELM as untimely, and there is nothing else in the record to support this conjecture he has not met the burden of rebutting the presumption that ELM officials have properly discharged their duties in receiving and promptly date stamping all such notices tendered to them.

Henry D. Friedman, 49 IBLA 97 (July 28, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner.

Ross Weaver, 49 IBLA 111 (July 28, 1980)

George W. Cole, 49 IBLA 128 (July 28, 1980)

Cripple Creek Exploration Corp., 49 IBLA 150 (Aug. 6, 1980)

Alfred Letcher, 49 IBLA 193 (Aug. 6, 1980)

Cleo May Fresh, Marjorie F. Deterts, 50 IBLA 363 (Oct. 16, 1980)

Robert E. Donahue, 50 IBLA 374 (Oct. 21, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The statute and regulations governing recordation of mining claims are mandatory and where a mining claimant contends that he mailed his notices of location along with other documents which were received by the Bureau of Land Management 1 day after the filing date, the claims are properly declared abandoned and void.

G. F. Marguardson, 49 IBLA 114 (July 28, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing in the Utah State Office rather than the Wyoming State Office is not sufficient.

Interstate Brick, 49 IBLA 125 (July 28, 1980)

Interstate Brick, 50 IBLA 107 (Sept. 17, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 19, 1979, and the filing fee therefor is not paid to BLM until Feb. 11, 1980, the date of filing for recordation of the notice is Feb. 11, 1980.

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

Lawrence Jacob, Freeda Jacob, 49 IBLA 137 (July 28, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, the owner of an unpatented mining claim located before Oct. 21, 1976, had to file in the proper office of the Bureau of Land Management a copy of the official record of the notice or certificate of location and an affidavit of assessment work performed on the claim on or before Oct. 22, 1979. Where the owner of an unpatented mining claim failed to file either instrument within the prescribed time, the claim is deemed conclusively to be abandoned and void.

George Stillman, 49 IBLA 150 (July 30, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that appellant lost or misplaced the required documents and had to send away for new ones will not excuse late filing.

Gale E. Powell, 49 IBLA 173 (July 30, 1980)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, within 90 days after the date of location of such claim, must file in the proper ELM office a copy of the official record of the notice of location or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

owner. The "date of location" is determined by reference to the law of the State in which the claim is situated.

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Weldon Mead Kennedy, Elmer Devore, 49 IBLA 180 (July 31, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a), 3833.2-1(a), 3833.4, for a mining claim located on or before Oct. 21, 1976, a copy of the notice or certificate of location and evidence of assessment work or notice of intention to hold must be filed with the Bureau of Land Management by Oct. 22, 1979, or the claim shall be deemed abandoned and void.

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of a claim or site are submitted to ELM for recordation on Dec. 26, 1979, and the filing fee therefor is not paid to ELM until Jan. 23, 1980, the recordation date of the notices is Jan. 23, 1980.

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

Brewery Hill Mining Co., Inc., 49 IBLA 197 (Aug. 6, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Glen Hocking, 49 IBLA 217 (Aug. 11, 1980)

Nila Tyrrel, 49 IBLA 267 (Aug. 18, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Mining claims located after the enactment of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, must be deemed abandoned and void if a copy of the notice of location or certificate of location is not filed with the proper Bureau of Land Management Office within 90 days after the date of location of such claims.

Darlene Y. Haymes et al., 49 IBLA 243 (Aug. 18, 1980)

Mining claims located in units of the National Park System must be recorded within 1 year of the date of enactment of the Mining in the Parks Act, sec. 8 of the Act of Sept. 28, 1976, 16 U.S.C. § 1907 (1976), rather than within 3 years of the enactment of the Federal Land Policy and Management Act of 1976, Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976).

Elden A. LeRoy, Dorothy A. LeRoy, 49 IBLA 320 (Aug. 20, 1980)

For a mining claim located on or before Oct. 21, 1976, under 43 U.S.C. § 1744 (1976), 43 CFR 3833.1-2(a) and 3833.4, a copy of the recorded notice or certificate of location must be filed with the appropriate BLM state office by Oct. 22, 1979, or the claim shall be conclusively deemed to be abandoned and void.

Virgal M. Taylor, Elizabeth Hutton, 49 IBLA 329 (Aug. 25, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, 3833.2-1, and 3833.4, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location and a copy of the recorded affidavit of assessment work or notice of intention to hold the claim, with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

John Lincoln, Jr., 49 IBLA 335 (Aug. 25, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Where a placer mining claim was located in 1975, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. If no evidence of assessment work has been timely filed with BLM, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

Vernon G. & Shirley S. Wickham, 50 IBLA 1 (Sept. 5, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The Board of Land Appeals has no authority to waive the strict requirements of the Federal Land Policy and Management Act of 1976 for recording mining claims, and where the requirements have not been met for a claim, the claim is properly declared abandoned and void.

Floise Joyce Williamson, 50 IBLA 42 (Sept. 9, 1980)

Under 43 CFR 3833.1-2(a) and 3833.4(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice or certificate of location with the Bureau of Land Management by Oct. 22, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

Hugh A. Johnson, 50 IBLA 47 (Sept. 9, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. The owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of mining claims are mandatory and where BLM has not received a notice of location, the claim is properly declared abandoned and void.

Margaret Covert, 50 IBLA 58 (Sept. 15, 1980)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file an instrument required by secs. 3833.1 and 3833.2 of this title within the time period prescribed therein shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it shall be void.

Tom Anderson, 50 IBLA 66 (Sept. 17, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the documents had been deposited in the mail and postmarked by the postal authorities Oct. 22, 1979, will not excuse the late filing.

Helen Holland et al., 50 IBLA 121 (Sept. 24, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Clifford J. Kelch, 50 IBLA 127 (Sept. 24, 1980)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of Location." The date of location of mining claims is determined in accordance with the law of the State where the claims are situated. Under California law, the time for recordation in the county is measured from the date of the posting of the location notice on the claims.

The dates of location of mining claims as shown on the notices of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are "typographical errors."

Lee Resources Management Corp., 50 IBLA 131 (Sept. 24, 1980)

Where a person has located a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file timely with the proper office of the Bureau of Land Management a copy of the notice or certificate of location of a mining claim is deemed conclusively to constitute an abandonment of the mining claim by the owner.

The Department of the Interior, as agency of Executive Branch of Government, is not proper forum to decide whether or not as to mining claims the recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Abner Reed, 50 IBLA 141 (Sept. 26, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed evidence of assessment work performed during the preceding assessment year or a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

John J. Schnabel, 50 IBLA 201 (Sept. 30, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, mill-site, or tunnel site and it properly is declared abandoned and void.

Lost Follack Mining and Exploration, Ltd., 50 IBLA 227 (Sept. 30, 1980)

Where the owner of unpatented mining claims located before Oct. 21, 1976, files copies of the notices of location of these claims prior to the Oct. 22, 1979, deadline for so doing, but fails to file evidence of annual assessment work during the preceding assessment year on or before this deadline, the claims are properly declared abandoned and void.

Stanley Bishop, 50 IBLA 371 (Oct. 21, 1980)

Joseph V. Dodge, d.b.a. Rocky Mountain Mineral Co., 50 IBLA 394 (Oct. 24, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented millsite located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. The owner of an unpatented millsite, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of millsite claims are mandatory and where BLM has not received a notice of location, the claim is properly declared abandoned and void.

Wayne E. Clutis, 50 IBLA 379 (Oct. 22, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1978, or the claims are conclusively deemed to have been abandoned by the owner and to be void.

Henry H. Schmid, Judith A. Schmid, 50 IBLA 406 (Oct. 24, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void.

Melvin E. Viles, 51 IBLA 32 (Oct. 30, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The statutory and regulatory requirements to file a notice of location are mandatory and failure to comply with them must result in a finding that the claims are void.

J. K. Kendrick, 51 IBLA 56 (Oct. 31, 1980)

Under 43 CFR 3833.1-2(d), the owner of unpatented mining claims must tender a filing fee of \$5 per claim when filing recordation information, or BLM properly rejects the filing as unacceptable. Where he submits information on or before the Oct. 22, 1979, deadline, but does not include this fee on or before this date, BLM properly regards this filing as unacceptable, so that the claims became void under 43 CFR 3833.4 when the deadline passed without an acceptable filing.

Where the owner of two mining claims files recordation information for two claims with BLM, but tenders only \$5 as a filing fee, this amount is insufficient to provide the required \$5 fee for both claims, and BLM properly may recognize only one claim as valid. In these circumstances, BLM properly requires the owner to select which claim to validate.

Eva Holmes et al., 51 IBLA 140 (Nov. 20, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, was required to file a copy of the official record of the notice or certificate of location, with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

John F. Schmelzer, 51 IBLA 188 (Dec. 2, 1980)

Pursuant to 43 CFR 3833.1-1, an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 Oct. 20, 1976), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

Arlay C. Burke, 51 IBLA 224 (Dec. 10, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the Post Office may have assured the claimant that the documents would reach the Colorado State Office by Oct. 22, 1979, will not excuse the late filing.

Cleghorn and Washburn Mining Co., 51 IBLA 265 (Dec. 15, 1980)

Where a person locates mining claims on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site by the owner.

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 22, 1979, and the check submitted was returned by the bank as uncollectible, the mining claims located prior to Oct. 21, 1976, are deemed abandoned and void.

John J. Punsore et al., 51 IBLA 297 (Dec. 17, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim must file a map, narrative, or sketch depicting the location of his mining claim or site. A BLM decision dated Aug. 22, 1980, effectively advising a claimant that his claims are void because no map has been filed within 30 days of July 16, 1979, will be set aside as erroneous where the file contains a map of the claims which is BLM date stamped Aug. 3, 1979.

George Phil Martinez, 51 IBLA 330 (Dec. 29, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a claimant files for recordation on Oct. 19, 1979, but

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

the filing fee is not paid to BLM until after the deadline for filing, Oct. 22, 1979, the mining claim must be deemed abandoned and void.

Robert W. Miller, Marjorie Eipper Miller, 51 IBLA 364 (Dec. 29, 1980)

REPEALERS

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of an occupancy claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

Royal Harris, 45 IBLA 87 (Jan. 17, 1980)

Dennis L. Lattery, 45 IBLA 219 (Jan. 31, 1980)

Darrell P. Riggs, Karen Sue Riggs, 46 IBLA 132 (Mar. 19, 1980)

Dorothea M. Taylor, Robert Taylor, 46 IBLA 198 (Mar. 24, 1980)

Thomas Taggart, 46 IBLA 350 (Apr. 8, 1980)

George W. Murphy, 48 IBLA 123 (May 30, 1980)

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right.

Marko and Yarrow Lewis, 46 IBLA 257 (Mar. 27, 1980)

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790. A claim under the townsite laws will be rejected where appellants have submitted no proof that they occupied the land prior to the effective date of FLPMA, Oct. 21, 1976, thus giving them a valid existing right which would have survived FLPMA.

Patsy Karl Neakok, Smiley A.C. Neakok, 48 IBLA 377 (July 11, 1980)

The repeal of sec. 704(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2792, of certain statutory authority to reserve land as a waterhole only prohibits future withdrawals or reservations of land under the repealed statutes and does not affect known waterholes withdrawn prior to the repeal. It was proper for the Bureau of Land Management to reject a water pipeline right-of-way application for land containing a waterhole which was withdrawn prior to the Federal Land Policy and Management Act of 1976, and where the water is needed for a public use.

Grant L. Hacking, 50 IBLA 154 (Sept. 30, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RESERVATION AND CONVEYANCE OF MINERAL INTERESTS

Bureau of Land Management may reject an application for conveyance of mineral interests pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), upon a determination that the application is fatally defective under 43 CFR 2720 or that conveyance would not be in the public interest, but where the record as to a rejection is not complete the decision may be set aside and the case remanded.

Esatin Electric Power Cooperative, 50 IBLA 197 (Sept. 30, 1980)

RIGHTS-CF-WAY

Public Land Order No. 2676 (1962), requires the approval of an authorized officer of the Department of the Army before the Secretary of the Interior can grant a right-of-way over lands subject to the public land order. The Department of the Interior has no authority to grant a right-of-way where the approval is withheld.

City of Anchorage, Alaska, and Jack G. Fisher, et al., a.k.a. Concerned Chugach Citizens v. Chugach Electric Ass'n, Inc., 45 IBLA 171 (Jan. 30, 1980) 87 I.L. 21

The standard of review in the case of rights-of-way applications for domestic water pipelines is whether the decisions demonstrate a reasoned analysis of the factors involved, with due regard for the public interest. A decision by ELM, made in exercise of its discretion, will be affirmed in the absence of sufficient reason to disturb it.

Where the bases of decisions rejecting rights-of-way applications for domestic water facility are contradicted by the Environmental Analysis Report on the project and alternatives enumerated therein, and where ELM failed to consider possible mitigating actions suggested by appellant, the decisions will be vacated and remanded for further consideration.

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

"Fair market value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

B & M Service, Inc., 48 IBLA 233 (June 17, 1980)

All facilities related to an oil and gas lease which are located on Federal land outside the lease, regardless of their nature, may be constructed only after appropriate rights-of-way have been granted. Similarly, on-lease oil and gas transportation facilities and on-lease commercial facilities require rights-of-way. Depending on the nature of the facility, the right-of-way would be granted pursuant to either sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), or Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976).

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.L. 291

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

"Fair market value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The relevant regulation, 43 CFR 2802.1-7(d), does not absolutely prohibit acceptance of partial payments of past due rentals in all circumstances.

Northwestern Colorado Broadcasting Co., 49 IBLA 23 (July 15, 1980)

The Federal Land Policy and Management Act of 1976 authorizes the Bureau of Land Management to recover reasonable costs including costs of environmental analyses for applications of rights-of-way across public lands.

Costs not directly associated with the processing or monitoring of a right-of-way application, such as evaluation of the mine to be served by the rights-of-way, are not authorized by the Federal Land Policy and Management Act of 1976 and are not reimbursable pursuant to 43 CFR 2802.1-2.

U.S. Steel Corp., 50 IBLA 190 (Sept. 30, 1980)
87 I.L. 473

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

Department of the Army, Corps of Engineers, 51 IELA 26 (Oct. 28, 1980)

A decision rejecting an application for an access road and canal right-of-way will be affirmed when the record shows that the appellant has failed to file a statement of the proper State official, or other evidence showing that he has a right to the use of the water.

Andrew A. Harrower, 51 IBLA 390 (Dec. 31, 1980)

RULES AND REGULATIONS

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Nov. 7, 1979, the recordation date of the notice of location is Nov. 7, 1979. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Nov. 7, 1979, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claim must be deemed abandoned and void.

Nevada Pacific Co., Inc., 46 IBLA 208 (Mar. 24, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RULES AND REGULATIONS--Continued

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim was submitted to ELM for recordation on Oct. 22, 1979, the deadline date, and the filing fee therefore is not paid to ELM until after the deadline for filing had passed, the mining claim must be deemed abandoned and void.

L. Leon Jennings, Mansfield L. Jennings, Gilbert M. Jennings, 47 IELA 47 (Apr. 14, 1980)

R. L. Durrant, Nod Mulville, B. E. Karn, 47 IELA 208 (May 13, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where certificates of location of mining claims are submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to ELM until Feb. 25, 1980, the recordation date of the notices of location is Feb. 25, 1980. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Feb. 25, 1980, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claims must be deemed abandoned and void.

Cecil V. Clifford, Jr., 47 IBLA 262 (May 13, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of mining claims, were submitted to BLM for recordation and the filing fees therefor were not paid to ELM until after the deadline (90 days after the date of location) had passed, the mining claims must be deemed abandoned and void.

Virginia Edwards, 47 IELA 301 (May 19, 1980)

An assertion of a preference right to purchase public land offered for public sale pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 82 Stat. 870 (43 U.S.C. §§ 1431-1435 (1976)) (now covered by the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701, 1722 (1976)), is improperly rejected when the applicant submits satisfactory equitable proof of his "ownership" of contiguous lands by showing that he has contracted to purchase such land, has made at least partial payment therefor, and is in possession thereof.

J. Furton Tuttle, 49 IELA 278 (Aug. 18, 1980)
87 I.L. 350

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a claimant files for recordation on Oct. 19, 1979, but

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RULES AND REGULATIONS--Continued

the filing fee is not paid to BLM until after the deadline for filing, Oct. 22, 1979, the mining claim must be deemed abandoned and void.

Robert W. Miller, Marjorie Eipper Miller, 51 IBLA 364 (Dec. 29, 1980)

SALES

An assertion of a preference right to purchase public land offered for public sale pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 82 Stat. 870 (43 U.S.C. §§ 1431-1435 (1976)) (now covered by the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701, 1722 (1976)), is improperly rejected when the applicant submits satisfactory equitable proof of his "ownership" of contiguous lands by showing that he has contracted to purchase such land, has made at least partial payment therefor, and is in possession thereof.

J. Burton Tuttle, 49 IBLA 278 (Aug. 18, 1980)
87 I.D. 350

SERVICE CHARGES

The owner of a mining claim located on or before Oct. 21, 1976, had until Oct. 22, 1979, to record a copy of the location notice with Bureau of Land Management and pay the required service fee, and where the fee was not paid 43 CFR 3833.1-2(d) requires that the notice of location be returned as unacceptable.

George B. Flewelling, 48 IBLA 141 (May 30, 1980)

WILDERNESS

Where the land embraced in a proposed geothermal lease has been identified as having wilderness characteristics and is being reviewed for possible preservation as wilderness pursuant to sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), it is proper for the Bureau of Land Management to require the execution of special wilderness protection stipulations.

Thermal Power Co., 49 IBLA 169 (July 30, 1980)

WITHDRAWALS

A mining claim located on land temporarily segregated from appropriation under the mining laws pursuant to 43 U.S.C. § 1714(b) (1976) is null and void ab initio.

Under 43 U.S.C. § 1714(b) (1976) a publication in the Federal Register of notification of an application for withdrawal, which publication temporarily segregates land from the operation of the mining laws, does not withdraw the land, and therefore the notice need not be signed by the Secretary or an individual in the Office of the Secretary who has been appointed by the President, by and with the advice and consent of the Senate.

Stephen W. Fox, 50 IBLA 186 (Sept. 30, 1980)
87 I.D. 462

FEES

(See also Accounts--if included in this Index.)

Where mining claimants attempt to record their claims on Oct. 28, 1977, which were located prior to Oct. 21, 1976, but do not submit the mandatory service fee, as required by 43 CFR 3833.1-2(d), until May 3, 1978, recordation of the claims is effective as of May 3, 1978, and the claimants are not required to file evidence of annual assessment work until Oct. 22, 1979.

W. Verne Knight, Eva M. Knight, 47 IBLA 351 (May 21, 1980)

FISH AND WILDLIFE SERVICE

In civil penalty proceeding concerning an alleged violation of the Eagle Protection Act, proof of conduct in violation of the Act must appear of record. Where the record fails to establish proof of an offer to sell an artifact agreed to be an eagle, there is no basis for assessment of a civil penalty.

Angel Nunez v. U. S. Fish & Wildlife Service, 4 OHA 25 (July 1, 1980)

GEOLOGICAL SURVEY

A Geological Survey Area Supervisor is acting within the authority granted to him by applicable provisions of Indian oil and gas leases and Indian and Federal royalty regulations when he decides to adopt the greater of either 1) actual sales prices of production from the leased lands or 2) a substitute price computed by him which is reasonably based on sales prices from all production from other similar tribal leases in the area, as the "value" of gas produced on these leases, and when he directs lessees to compute royalty based on the greater of the two values so calculated.

Where the Area Supervisor assembles data concerning sales from all Jicarilla tribal leases for a particular year and determines the median sales price, his use of this figure as a minimum floor price by which to determine value will be affirmed, as this decision is within the latitude afforded him, and this price is reasonably based on transactions indicative of the actual value of the production in the area at that time.

A lessee's obligation to pay royalty based on an accurate determination of the current value of production is not mitigated by its having committed by long-term contract to sell this product at a price below this value.

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

The Area Supervisor has the authority to require a lessee to determine the value of the lease product by both the "PIU" and "net-realization" methods and may require the lessee to adopt as value whichever result is higher as the basis for computation of royalty for natural gas.

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so

GEOLOGICAL SURVEY--Continued

is apparently res judicata, the only question being whether the order is the court's final action.

Under controlling provisions, an Area Supervisor has the discretion to establish a cost-of-manufacture allowance for use in the net-realization method of determining value for royalty purposes. Where this allowance is well based on the actual amounts needed to process out by-products of the crude gas, it will be upheld in the absence of a clear showing that it is erroneous.

Supron Energy Corp. et al., 46 IBLA 181 (Mar. 21, 1980)

An order by a GS conservation manager directing holders of two adjacent outer continental shelf oil and gas leases covering a single producing geological structure to unitize will be affirmed where the record shows that the producing mechanism of the structure is a gas cap almost wholly under the exclusive control of the holders of one of the leases, and that improper development of gas from this cap would reduce the ultimate recovery of oil and gas from the structure, as the Department has the authority to require unitization in order to conserve the resources of the outer continental shelf under sec. 5(a) of the CCS Lands Act, as amended.

Placid Oil Co. et al., 46 IBLA 392 (Apr. 10, 1980)

Where the Secretary has decided that production from phosphate leases should be valued in accordance with a particular method and what the value should be, the Board's review authority is limited to determining whether the Geological Survey Area Supervisor who issues orders to the phosphate lessees has properly followed the Secretary's instructions. No hearing is required as a prerequisite to the order.

Where the Department has not formally adopted any methodology for determining the value of production from phosphate leases, but has instead allowed lessees simply to pay royalty based on the minimum value specified in the lease after having advised them that a new method of determining a realistic value was being developed, it may assert that royalty was incorrect even after it has accepted these royalty payments, and may impose the method as approved by the Secretary.

Stauffer Chemical Co. et al., 49 IBLA 381 (Sept. 5, 1980)

GEO THERMAL LEASES

(See also Hearings, Mineral Leasing Act--if included in this Index.)

ACREAGE LIMITATIONS

Under the applicable regulations, 43 CFR 3203.2(a) and 3210.2-1(c), if a section contains less than 640 unappropriated acres of available land, a geothermal resources lease application must, as a general rule, include all available lands in one or more adjoining sections until at least 640 unappropriated acres are accumulated in order to meet the requirements of 43 CFR 3210.2-1(c), and to insure that BLM will be able to issue a lease of no less than 640 acres.

Hassie Hunt Exploration Co., 46 IBLA 161 (Mar. 21, 1980)

GEO THERMAL LEASES--Continued

APPLICATIONS

Generally

Under the applicable regulations, 43 CFR 3203.2(a) and 3210.2-1(c), if a section contains less than 640 unappropriated acres of available land, a geothermal resources lease application must, as a general rule, include all available lands in one or more adjoining sections until at least 640 unappropriated acres are accumulated in order to meet the requirements of 43 CFR 3210.2-1(c), and to insure that BLM will be able to issue a lease of no less than 640 acres.

Hassie Hunt Exploration Co., 46 IBLA 161 (Mar. 21, 1980)

Amendments

The Bureau of Land Management has no authority to correct an error in a description of land sought under a geothermal lease application. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section.

Diane E. Katz, 47 IBLA 1 (Apr. 10, 1980)

Description

The Bureau of Land Management has no authority to correct an error in a description of land sought under a geothermal lease application. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section.

Diane E. Katz, 47 IBLA 1 (Apr. 10, 1980)

DESCRIPTION OF LAND

The Bureau of Land Management has no authority to correct an error in a description of land sought under a geothermal lease application. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section.

Diane E. Katz, 47 IBLA 1 (Apr. 10, 1980)

GEOHERMAL LEASES--Continued

DISCRETION TO LEASE

Under the applicable regulations, 43 CFR 3203.2(a) and 3210.2-1(c), if a section contains less than 640 unappropriated acres of available land, a geothermal resources lease application must, as a general rule, include all available lands in one or more adjoining sections until at least 640 unappropriated acres are accumulated in order to meet the requirements of 43 CFR 3210.2-1(c), and to insure that BLM will be able to issue a lease of no less than 640 acres.

Hassie Hunt Exploration Co., 46 IBLA 161 (Mar. 21, 1980)

Where the Bureau of Land Management rejects an application to lease for geothermal resources solely on the objection of the commanding officer, Fallon Naval Air Station, and where Bureau officials did not make an independent determination whether leasing the lands is in the public interest, the rejection is not a proper exercise of discretion.

Occidental Geothermal, Inc., 48 IBLA 400 (July 11, 1980)

KNOWN GEOHERMAL RESOURCES AREA

An application for a noncompetitive geothermal lease must be rejected if the land is found to be within a Known Geological Resource Area (KGRA) at anytime prior to issuance of a lease, and no evidence has been offered to show the KGRA designation to be in error.

Marvin L. McGahey, 50 IBLA 4 (Sept. 5, 1980)

NONCOMPETITIVE LEASES

An application for a noncompetitive geothermal lease must be rejected if the land is found to be within a Known Geological Resource Area (KGRA) at anytime prior to issuance of a lease, and no evidence has been offered to show the KGRA designation to be in error.

Marvin L. McGahey, 50 IBLA 4 (Sept. 5, 1980)

STIPULATIONS

Where the land embraced in a proposed geothermal lease has been identified as having wilderness characteristics and is being reviewed for possible preservation as wilderness pursuant to sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), it is proper for the Bureau of Land Management to require the execution of special wilderness protection stipulations.

Thermal Power Co., 49 IBLA 169 (July 30, 1980)

GEOHERMAL RESOURCES

Where the Bureau of Land Management rejects an application to lease for geothermal resources solely on the objection of the commanding officer, Fallon Naval Air Station, and where Bureau officials did not make an independent determination whether leasing the lands is in the public interest, the rejection is not a proper exercise of discretion.

Occidental Geothermal, Inc., 48 IBLA 400 (July 11, 1980)

GRAZING AND GRAZING LANDS

Where ELM renewed an Alaska grazing lease on lands for which the State of Alaska had previously filed a selection application, and where it first expressly advised the lessee that his lease would be subject to cancellation when the State's application was resolved, BLM may cancel the lease following tentative approval of the State selection application preparatory to transferring control over the lands to the State, as 43 CFR 4230.1 gives it the authority to cancel Alaska grazing leases to permit utilization of the land for other purposes in the public interest.

Estate of C. Walter Keaster, 47 IBLA 363 (May 21, 1980)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Protection and management of Federal range lands is a continuing responsibility and may not be divested through agreement with a private party. An allotment management plan is not such a premenantly binding contract that the grazing user's refusal to agree to changes precludes ELM from modifying or vacating the plan upon a finding, rationally based, that the plan is inconsistent with BLM objectives and good range management.

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bert N. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

GRAZING LEASES

(See also Taylor Grazing Act--if included in this Index.)

CANCELLATION OR REDUCTION

Where ELM renewed an Alaska grazing lease on lands for which the State of Alaska had previously filed a selection application, and where it first expressly advised the lessee that his lease would be subject to cancellation when the State's application was resolved, ELM may cancel the lease following tentative approval of the State selection application preparatory to transferring control over the lands to the State, as 43 CFR 4230.1 gives it the authority to cancel Alaska grazing leases to permit utilization of the land for other purposes in the public interest.

Estate of C. Walter Keaster, 47 IBLA 363 (May 21, 1980)

GRAZING PERMITS AND LICENSES

(See also Appeals, Hearings, Taylor Grazing Act--if included in this Index.)

GENERALLY

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Protection and management of Federal range lands is a continuing responsibility and may not be divested through agreement with a private party. An allotment management plan is not such a premenantly binding contract that the grazing user's refusal to

GRAZING PERMITS AND LICENSES--ContinuedGENERALLY--Continued

agree to changes precludes BLM from modifying or vacating the plan upon a finding, rationally based, that the plan is inconsistent with BLM objectives and good range management.

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bert N. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Where under 43 CFR 4120.2-4(d) BLM has discretionary authority to require ear-tagging to control unauthorized grazing use or to promote the orderly administration of public lands, a refusal to issue ear tags reasonably related to the protection of public lands will be sustained.

Kenneth H. and Doris N. Earp, 50 IBLA 235 (Sept. 30, 1980)

APPEALS

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bert N. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

BASE PROPERTY (LAND)Ownership or Control

The loss of ownership or control of base property results in the loss of grazing privileges attached thereto and requires the cancellation of the license, in the absence of a timely application for transfer of grazing privileges to new base property.

Jimmie and Leona Ferrara, 47 IBLA 335 (May 21, 1980)

Transfers

A timely transfer of grazing license privileges to new base property may be made only while the original base property is within the ownership or control of the licensee, and transfer may not be made following sale of the original property.

Jimmie and Leona Ferrara, 47 IBLA 335 (May 21, 1980)

GRAZING PERMITS AND LICENSES--ContinuedCANCELLATION OR REDUCTION

A motion to dismiss an appeal from a decision of the District Manager is properly granted pursuant to 43 CFR 4.470 where the arguments set forth by an applicant for a grazing license or permit are immaterial to the issue of whether the applicant has previously made substantial use of his grazing privileges.

Floyd and Corwin Silva, 45 IBLA 11 (Jan. 8, 1980)

The loss of ownership or control of base property results in the loss of grazing privileges attached thereto and requires the cancellation of the license, in the absence of a timely application for transfer of grazing privileges to new base property.

Even if it be established that the Department had not applied in previous years regulation 43 CFR 4115.2-1(e)(8) (1975), which requires termination of grazing privileges upon loss of ownership or control of base property, such failure to apply the regulation is not authority to further disregard the regulation.

Jimmie and Leona Ferrara, 47 IBLA 335 (May 21, 1980)

HEARINGS

(See also Administrative Procedure, Federal Land Policy & Management Act of 1976, Geothermal Leases, Grazing Permit & Licenses, Indian Probate, Mining Claims, Multiple Mineral Development Act, Rules of Practice, Surface Resource Act, Water Pollution Control--if included in this Index.)

Where a mining claim contestee fails to appear at a contest hearing and merely sends a message stating that he will not appear, without stating the reasons for his absence, a subsequent motion to reschedule the hearing and reopen the record is properly denied, as the regulations provide that a postponement may be granted only pursuant to a request made no later than the hearing date and stating in detail the reasons why a postponement is necessary.

The asserted inability of a contestee to drive an automobile due to his taking medication is not an extreme emergency which justifies beyond question the granting of a postponement of the hearing where it is not impossible to get to a hearing site by public transportation. Nor is restricted mobility due to arthritis justification for a postponement where the record shows that it is an ongoing condition which could have been anticipated, and that transportation to the hearing site could have been arranged by exercise of proper diligence.

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record as completed at the hearing, despite the absence of evidence in support of the party's case.

New evidence offered on appeal after an initial decision is rendered by an Administrative Law Judge may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Richard H. Franklin, 45 IBLA 54 (Jan. 14, 1980)

HEARINGS--Continued

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard G. Clemans et al., 45 IBLA 64 (Jan. 17, 1980)

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, an appraisal will be sustained in the absence of an offer of specific substantial evidence that it is incorrect.

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if the hearing should be reopened.

United States v. Ludwig G. Rosenkranz, 46 IBLA 109 (Feb. 29, 1980)

Where Bureau of Land Management determines that an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IBLA 165 (Mar. 21, 1980)

Where a corporate simultaneous oil and gas lease offeror alleges no facts which could disprove its failure to comply with 43 CFR 3102.4-1, no hearing will be granted as requested.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980)
87 I.D. 110

A Native allotment application filed pursuant to the Alaska Native Allotment Act of 1906 must be rejected if it was not pending before the Department of the Interior on Dec. 18, 1971. Where there are factual questions concerning the pendency of an application they can best be resolved at a hearing pursuant to a Government contest.

Eleanor H. Wood, 46 IBLA 373 (Apr. 8, 1980)

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Burton/Hawks, Inc., 47 IBLA 125 (Apr. 29, 1980)

HEARINGS--Continued

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Evan Chukwak, 47 IBLA 241 (May 13, 1980)

Where a question of fact exists as to when accreted land was formed in front of a patented upland lot along the Yellowstone River and whether title to the accreted land is in the United States and, therefore, subject to oil and gas leasing, a hearing may be ordered by this Board pursuant to 43 CFR 4.415.

Eldin L. R. Johnson, Marilyn Johnson, 47 IBLA 366 (May 21, 1980)

A hearing is properly ordered pursuant to 43 CFR 3521.1-1(j) where a preference right lease application for trona is rejected and the applicant has alleged in his application facts sufficient to show that he is entitled to a lease. At the hearing, the permittee shall have both the burden of going forward and the burden of proof, and must show by a preponderance of the evidence that he has discovered a valuable deposit of trona and that the land is chiefly valuable therefor.

John S. Wold, Eugene V. Simons, 48 IBLA 106 (May 30, 1980)

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting against multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of Eden Capital Corp. and its clientele where there are ambiguities in the complex contract which provides for a preliminary division of lease obligations and proceeds and establishment of a lease escrow fund to protect funds promised to the client if the client exercises an option by which Eden will buy all leases in a particular lease program subscribed to by the client, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients of Eden have given to the terms.

Harry S. Hills, Kenneth E. Roth, 48 IBLA 356 (July 11, 1980)

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of a leasing service and its clientele where there are ambiguities in the complex contract between them, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients have given to the terms.

Valerie Mellor, Elizabeth R. Prozda, 49 IBLA 303 (Aug. 20, 1980)

HEARINGS--Continued

Where the Secretary has decided that production from phosphate leases should be valued in accordance with a particular method and what the value should be, the Board's review authority is limited to determining whether the Geological Survey Area Supervisor who issues orders to the phosphate lessees has properly followed the Secretary's instructions. No hearing is required as a prerequisite to the order.

Stauffer Chemical Co. et al., 49 IBLA 381 (Sept. 5, 1980)

A second hearing of a Government mining contest will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where he was actually present at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result. A petition to reopen a hearing of a Government mining contest will be denied when the contestee offers no valid justification for the neglect to offer evidence which was or could have been available at the original hearing. A further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

John Swanson, 51 IBLA 239 (Dec. 15, 1980)

HOMESTEADS (ORDINARY)

(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldiers' Additional Homesteads, Stock-Raising Homesteads--if included in this Index.)

GENERALLY

An entryman's final proof is properly rejected when it is defective on its face, with the final proof showing that the applicable residence and cultivation requirements have not been met.

Richard L. Nevitt, 47 IBLA 257 (May 13, 1980)

MINERAL RESERVATION

A patent issued pursuant to the Homestead Act of May 20, 1862, 43 U.S.C. § 161 (1976), reserving to the United States all coal under the Act of June 22, 1910 (36 Stat. 583) and sodium under the Act of July 17, 1914 (38 Stat. 509) in the lands described by such patent, cannot be construed as reserving to the United States other minerals, such as oil and gas, which are not specifically reserved therein.

Circular 1021, July 21, 1925, instructed the land offices to impress upon a nonmineral application a reservation of those minerals for which the land had been embraced in applications for permit or lease.

Lee E. Williamson, 48 IBLA 329 (July 3, 1980)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

GENERALLY

An application for an Indian allotment, filed pursuant to 25 U.S.C. § 334 (1976), must contain a land description sufficient for the land applied for to be identified on official BLM records, or the application is subject to rejection.

Ira Jean Petworth, 45 IBLA 24 (Jan. 14, 1980)

Where disputed issues of fact are raised by an Indian allotment applicant concerning whether (1) the applicant's occupancy qualifies her for an Indian allotment, (2) the applied for land taken together with other patented land would be enough to sustain a family of four through the grazing season, and (3) the public interest could best be served if the land were retained in Federal ownership, the applicant is entitled to notice and an opportunity for hearing before the application is rejected on the record.

Lorinda L. Bulsman, 46 IBLA 303 (Mar. 31, 1980)

An application for an Indian allotment, filed on behalf of a minor child, pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) and (d), is properly rejected.

Geneiva Nell Maston Smith et al., 48 IBLA 199 (June 16, 1980)

No rights of Indians are violated because public lands have been withdrawn from settlement and must be classified pursuant to the Taylor Grazing Act, 43 U.S.C. § 315 (1976), before such lands can be allotted to an Indian under sec. 4 of the General Allotment Act of 1887, 25 U.S.C. § 334 (1976).

An application for an Indian allotment, filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) and (d) or the petition for classification required by 43 CFR 2531.2 may be rejected.

Don Stokes et al., 48 IBLA 365 (July 11, 1980)

Tammy Lou Ricker Smith et al., 49 IBLA 251 (Aug. 18, 1980)

No rights of Indians are violated because public lands have been withdrawn from settlement and must be classified pursuant to the Taylor Grazing Act, 43 U.S.C. § 315 (1976), before public lands can be allotted to an Indian under sec. 4 of the General Allotment Act of 1887, 25 U.S.C. § 334 (1976).

An application for an Indian allotment, filed on behalf of a minor child, pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) and (d), is properly rejected.

Nolia Fern Ricker, Clyde Lloyd Atwater, 48 IBLA 373 (July 11, 1980)

INDIAN ALLOTMENTS ON PUBLIC DOMAINS --Continued

GENERALLY--Continued

Applications for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1 are properly rejected.

Applications for Indian allotment on the public domain filed pursuant to sec. 4 of the General Allotment Act, as amended 25 U.S.C. § 334 (1976), which are not accompanied by the petition for classification required by 43 CFR 2531.2 are properly rejected.

No rights of Indians are violated because public lands have been withdrawn from settlement and must be classified pursuant to the Taylor Grazing Act, 43 U.S.C. § 315 (1976), before public lands can be allotted to an Indian under sec. 4 of the General Allotment Act of 1887, 25 U.S.C. § 334 (1976).

Robert Dale Marston et al., 51 IBLA 115 (Nov. 20, 1980)

An application for Indian allotment, filed pursuant to 25 U.S.C. § 334 (1976), must be rejected where the land applied for does not exist.

Loretta Berlene Garrison Lee, 51 IBLA 176 (Nov. 26, 1980)

LANDS SUBJECT TO

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been transferred from Federal ownership.

Maudra June Underwood Lentell, Marvin Curtis Swanner, 49 IBLA 317 (Aug. 20, 1980)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the agricultural land laws on July 7, 1967, when the "Notice of Classification of Public Lands for Multiple Use Management" was published in the Federal Register.

Pamela June Wood Finch, 49 IBLA 325 (Aug. 22, 1980)

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice, and applications for such land must be rejected.

Robert Dale Marston et al., 51 IBLA 115 (Nov. 20, 1980)

INDIAN ALLOTMENTS ON PUBLIC DOMAINS--Continued

LANDS SUBJECT TO--Continued

Lands withdrawn for reclamation purposes are not available for disposition under the public land laws, including the Indian Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), and an application thereunder for land so withdrawn is properly rejected.

James A. Fort, 51 IBLA 285 (Dec. 15, 1980)

INDIAN LANDS

(See also Exchanges of Land, Indian Probate, Rights-of-Way--if included in this Index.)

ABORIGINAL TITLE

Alaskan Native aboriginal occupancy claims, or claims under the organic Act of Alaska of May 17, 1884, and the Act of June 6, 1900, were extinguished by the Alaska Native Claims Settlement Act. A Native applicant's rights under the 1906 Native Allotment Act are based upon his or her individual compliance with that Act and not upon any ancestral use of the land.

William Pouwens et al., 46 IBLA 366 (Apr. 8, 1980)

ALLOTMENTS

Generally

The Commissioner, Bureau of Indian Affairs, properly required the publication of a notice to offer for sale oil and gas leases on Navajo allotment lands pursuant to 25 CFR 172.4 after disapproval of leases negotiated with Indian allottees.

Mesa Petroleum Co., 47 IBLA 66 (Apr. 18, 1980)

Under 25 CFR Part 121 the issuance to qualified applicants of fee patent title to trust allotments is a discretionary act of the Secretary. Thus, where both an applicant for issuance of a fee patent to trust lands and the tribe of which he is a member have addressed policy arguments to the Secretary to move his discretion regarding termination of an allotment's trust status, it is error to refuse to decide the issue presented on its merits.

Gila River Indian Community v. Commissioner of Indian Affairs and Henry Martinez, Jr., 8 IEIA 150 (Aug. 18, 1980)

Alienation

An Indian tribe, seeking to enforce debt collection of loan secured by mortgage of trust lands and assignment of income from trust lands executed more than 1 year prior to bankruptcy, presented an assignment of trust income executed in conformity with 25 CFR 109.4 to BIA officials responsible for administration of appellant's IIM account. The security interest thus obtained in appellant's trust lands by the tribe is a perfected security interest which attaches to the fund and entitles the tribe to the payments made by the agency officials despite appellant's intervening adjudication of bankruptcy.

Clarence Runs After v. Aberdeen Area Director, Bureau of Indian Affairs, and Cheyenne River Sioux Tribe, 8 IEIA 170 (Oct. 27, 1980) 87 I.L. 501

INDIAN LANDS--Continued

ALLOTMENTS--Continued

Alienation--Continued

In light of the unique history of land ownership and Federal-Indian relations on the Quinault Reservation, any Quinault allottee living on June 1, 1934, should be entitled to receive other trust land on the reservation by gift deed in accordance with the provisions of secs. 5 and 19 of the Indian Reorganization Act (25 U.S.C. §§ 465 and 479 (1976)).

Walter S. Brown v. Commissioner of Indian Affairs,
8 IBIA 183 (Oct. 28, 1980) 87 I.D. 507

ASSIGNMENTS

An Indian tribe, seeking to enforce debt collection of loan secured by mortgage of trust lands and assignment of income from trust lands executed more than 1 year prior to bankruptcy, presented an assignment of trust income executed in conformity with 25 CFR 109.4 to BIA officials responsible for administration of appellant's IIM account. The security interest thus obtained in appellant's trust lands by the tribe is a perfected security interest which attaches to the fund and entitles the tribe to the payments made by the agency officials despite appellant's intervening adjudication of bankruptcy.

Clarence Runs After v. Aberdeen Area Director, Bureau of Indian Affairs, and Cheyenne River Sioux Tribe,
8 IBIA 170 (Oct. 27, 1980) 87 I.D. 501

CONTRACTS

Formation and ValidityGenerally

Recital in a lease agreement of a one dollar annual rental is, under the circumstances of the case, merely a formal recital and does not state the actual consideration for the leasing agreement intended by the parties. Acceptance of the nominal rental by the BIA office concerned did not, therefore, operate to waive the substantial breach of the lease caused by appellant's nonperformance.

Administrative Appeal of Mark Small v. Commissioner of Indian Affairs, 8 IBIA 18 (Mar. 10, 1980)

GRAZING

Generally

The Bureau's decision to increase grazing fees for the fourth year of the permit period is not inconsistent with the general regulatory provisions of 25 CFR Part 151, which are incorporated by reference in the permit.

The plain wording of the grazing permit does not convey the stipulation that new fees may be pronounced by Aug. 1, 1979, but not thereafter. As there is no legal requirement that permittees be given prior notice of grazing fee increases, it is not unreasonable to conclude that the Aug. 1 date cited in the permit refers merely to a goal or objective for the completion of fee reevaluations.

The appellant association and members thereof have not been denied substantive due process through the readjustment of a grazing permit which specifically provides for readjustment. Appellant's procedural due process rights are secured through the opportunity to appeal the Area Director's action to the Commissioner

INDIAN LANDS--Continued

GRAZING--Continued

Generally--Continued

and the Board of Indian Appeals pursuant to the provisions of 25 CFR Part 2 and 43 CFR 4.350-4.369.

Administrative Appeal of Fort Berthold Land and Live-stock Ass'n v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 90 (June 6, 1980) 87 I.D. 201

Appeals

The appellant association and members thereof have not been denied substantive due process through the readjustment of a grazing permit which specifically provides for readjustment. Appellant's procedural due process rights are secured through the opportunity to appeal the Area Director's action to the Commissioner and the Board of Indian Appeals pursuant to the provisions of 25 CFR Part 2 and 43 CFR 4.350-4.369.

Administrative Appeal of Fort Berthold Land and Live-stock Ass'n v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 90 (June 6, 1980) 87 I.D. 201

Rental Rates

The Bureau's decision to increase grazing fees for the fourth year of the permit period is not inconsistent with the general regulatory provisions of 25 CFR Part 151, which are incorporated by reference in the permit.

The plain wording of the grazing permit does not convey the stipulation that new fees may be pronounced by Aug. 1, 1979, but not thereafter. As there is no legal requirement that permittees be given prior notice of grazing fee increases, it is not unreasonable to conclude that the Aug. 1 date cited in the permit refers merely to a goal or objective for the completion of fee reevaluations.

The appellant association and members thereof have not been denied substantive due process through the readjustment of a grazing permit which specifically provides for readjustment. Appellant's procedural due process rights are secured through the opportunity to appeal the Area Director's action to the Commissioner and the Board of Indian Appeals pursuant to the provisions of 25 CFR Part 2 and 43 CFR 4.350-4.369.

Administrative Appeal of Fort Berthold Land and Live-stock Ass'n v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 90 (June 6, 1980) 87 I.D. 201

LEASES AND PERMITS

Long-term Business/AgricultureGenerally

Recital in a lease agreement of a one dollar annual rental is, under the circumstances of the case, merely a formal recital and does not state the actual consideration for the leasing agreement intended by the parties. Acceptance of the nominal rental by the BIA office concerned did not, therefore, operate to waive the substantial breach of the lease caused by appellant's nonperformance.

Administrative Appeal of Mark Small v. Commissioner of Indian Affairs, 8 IBIA 18 (Mar. 10, 1980)

INDIAN LANDS--ContinuedLEASES AND PERMITS--ContinuedLong-term Business/Agriculture--ContinuedCancellation

Where tribe leased lands to operator of a post and pole plant for the declared purpose that he conduct a business on tribal lands, and the attendant circumstances of the negotiation for the lease establish the tribe sought to use the leasing agreement to foster business on the reservation and lower tribal unemployment thereby, the failure and subsequent termination of the business venture provided cause for cancellation of the lease pursuant to 25 CFR 131.14.

Administrative Appeal of Mark Small v. Commissioner of Indian Affairs, 8 IBIA 18 (Mar. 10, 1980)

Where a business lease between tribe and automobile dealer contains a cancellation clause providing for alternative remedies in case of breach of the agreement by lessee, use of the phrase "and/or" in reference to the various alternatives cannot reasonably be construed to be a delegation to the tribe of Secretarial authority to cancel the lease in the event of breach of the lease by the lessee. Nor does the existence of alternative remedies in the lease constitute Secretarial consent that the tribe undertake to administer the lease without agency participation contrary to Departmental regulations.

Where Departmental regulations at 25 CFR Part 131 are incorporated by reference as part of the lease, those regulations are to be applied in the administration of the lease as though fully set out in the written lease agreement. The regulations incorporated into the lease become binding upon the parties. The agency may not ignore nor act contrary to the provisions of the incorporated regulations which require Secretarial consent to cancellation of the lease, subject to certain specified due process requirements set out in the regulations.

A collateral attempt by a tribal court to cancel appellant's lease by entry of a declaratory judgment that appellant "materially breached the lease" is ineffective to result in cancellation since the judgment goes beyond the subject matter jurisdiction of the court to enforce.

Administrative Appeal of Marlin D. Kuykendall v. Phoenix Area Director, Bureau of Indian Affairs, and Yavapai-Prescott Tribe, 8 IBIA 76 (June 2, 1980) 87 I.D. 189

Failure to raise question concerning delivery of water to leased lands at early stages of appeal, together with circumstances surrounding the issue sought to be raised which indicate the question was not seriously urged by appellant in dealings with the tribal lessor, require a finding that alleged failure to supply water to the leased lands in a certain fashion was not a default by the lessor that would excuse payment of rent.

Where lease contains several provisions concerning notice to be given in case of default, the provisions of Departmental regulation incorporated into the lease which govern due process requirements for giving notice of default are controlling. Since appellant received the benefit of the notice provisions of both 25 CFR 131.14 and the default clause at paragraph 27 of the lease, he was not damaged by an omission of some of the language of paragraph 27 from the notice of default sent him by the tribe.

John W. Bale v. Commissioner of Indian Affairs, 8 IBIA 158 (Oct. 15, 1980)

INDIAN LANDS--ContinuedLEASES AND PERMITS--ContinuedOil and Gas

A Geological Survey Area Supervisor is acting within the authority granted to him by applicable provisions of Indian oil and gas leases and Indian and Federal royalty regulations when he decides to adopt the greater of either 1) actual sales prices of production from the leased lands or 2) a substitute price computed by him which is reasonably based on sales prices from all production from other similar tribal leases in the area, as the "value" of gas produced on these leases, and when he directs lessees to compute royalty based on the greater of the two values so calculated.

Where the Area Supervisor assembles data concerning sales from all Jicarilla tribal leases for a particular year and determines the median sales price, his use of this figure as a minimum floor price by which to determine value will be affirmed, as this decision is within the latitude afforded him, and this price is reasonably based on transactions indicative of the actual value of the production in the area at that time.

A lessee's obligation to pay royalty based on an accurate determination of the current value of production is not mitigated by its having committed by long-term contract to sell this product at a price below this value.

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

The Area Supervisor has the authority to require a lessee to determine the value of the lease product by both the "ETU" and "net-realization" methods and may require the lessee to adopt as value whichever result is higher as the basis for computation of royalty for natural gas.

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so is apparently res judicata, the only question being whether the order is the court's final action.

Under controlling provisions, an Area Supervisor has the discretion to establish a cost-of-manufacture allowance for use in the net-realization method of determining value for royalty purposes. Where this allowance is well based on the actual amounts needed to process out by-products of the crude gas, it will be upheld in the absence of a clear showing that it is erroneous.

Supron Energy Corp. et al., 46 IBIA 181 (Mar. 21, 1980)

The Commissioner, Bureau of Indian Affairs, properly required the publication of a notice to offer for sale oil and gas leases on Navajo allotment lands pursuant to 25 CFR 172.4 after disapproval of leases negotiated with Indian allottees.

Mesa Petroleum Co., 47 IBIA 66 (Apr. 18, 1980)

INDIAN LANDS--ContinuedLEASES AND PERMITS--ContinuedViolationGenerally

Where BIA office notified appellant lessee of default in performance and sought, on several occasions, to obtain his performance or relinquishment of leased lands, notice requirements of 25 CFR Part 2 were substantially met, since appellant had actual notice of subsequent lease termination.

Administrative Appeal of Mark Small v. Commissioner of Indian Affairs, 8 IBIA 18 (Mar. 10, 1980)

OIL AND GAS LEASINGGenerally

A Geological Survey Area Supervisor is acting within the authority granted to him by applicable provisions of Indian oil and gas leases and Indian and Federal royalty regulations when he decides to adopt the greater of either 1) actual sales prices of production from the leased lands or 2) a substitute price computed by him which is reasonably based on sales prices from all production from other similar tribal leases in the area, as the "value" of gas produced on these leases, and when he directs lessees to compute royalty based on the greater of the two values so calculated.

Where the Area Supervisor assembles data concerning sales from all Jicarilla tribal leases for a particular year and determines the median sales price, his use of this figure as a minimum floor price by which to determine value will be affirmed, as this decision is within the latitude afforded him, and this price is reasonably based on transactions indicative of the actual value of the production in the area at that time.

A lessee's obligation to pay royalty based on an accurate determination of the current value of production is not mitigated by its having committed by long-term contract to sell this product at a price below this value.

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

The Area Supervisor has the authority to require a lessee to determine the value of the lease product by both the "BTU" and "net-realization" methods and may require the lessee to adopt as value whichever result is higher as the basis for computation of royalty for natural gas.

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so is apparently res judicata, the only question being whether the order is the court's final action.

Under controlling provisions, an Area Supervisor has the discretion to establish a cost-of-manufacture allowance for use in the net-realization method of determining value for royalty purposes. Where this allowance is well based on the actual amounts needed to process out by-products of the crude gas, it will

INDIAN LANDS--ContinuedOIL AND GAS LEASING--ContinuedGenerally--Continued

be upheld in the absence of a clear showing that it is erroneous.

Supron Energy Corp., et al., 46 IBIA 181 (Mar. 21, 1980)

Allotted Lands

The Commissioner, Bureau of Indian Affairs, properly required the publication of a notice to offer for sale oil and gas leases on Navajo allotment lands pursuant to 25 CFR 172.4 after disapproval of leases negotiated with Indian allottees.

Mesa Petroleum Co., 47 IBIA 66 (Apr. 18, 1980)

PATENT IN FEEGenerally

Under 25 CFR Part 121 the issuance to qualified applicants of fee patent title to trust allotments is a discretionary act of the Secretary. Thus, where both an applicant for issuance of a fee patent to trust lands and the tribe of which he is a member have addressed policy arguments to the Secretary to move his discretion regarding termination of an allotment's trust status, it is error to refuse to decide the issue presented on its merits.

Gila River Indian Community v. Commissioner of Indian Affairs and Henry Martinez, Jr., 8 IBIA 150 (Aug. 18, 1980)

TRIBAL RIGHTS IN ALLOTTED LANDS

The original power to determine membership, including adoption, is in the tribe. After approval of an individual for membership, a tribe retains the power to disenroll provided it follows provisions for termination of enrollment contained in its membership ordinance.

The Administrative Law Judge acted properly in relying on one of two dates stipulated to by the parties regarding a valuation date for the acquisition of land under the Nez Perce Inheritance Act.

Neither the Administrative Law Judge nor the Board is bound by the Bureau of Indian Affairs' report and findings contained therein. Instead consideration will be given to the complete record in arriving at a determination as to fair market value.

Estate of Antoine (Ke Nape) Hill, 8 IBIA 121 (July 21, 1980)

INDIAN PRCPATE

(See also Appeals, Bureau of Indian Affairs, Hearings, Indian Lands, Indian Tribes, Rules of Practice--if included in this Index.)

ADOPTION (See also CHILDREN, ADOPTED--if included in this Index.)

Generally

One who participated in an adoption proceeding has no standing to object that some other person was deprived of his or her constitutional rights.

Where the jurisdictional invalidity of an Indian adoption granted by an officer of the Bureau of Indian

INDIAN PROBATE--Continued

ADOPTION (See also CHILDREN, ADOPTED--if included in this Index.)--Continued

Generally--Continued

Affairs appears on the face of the record, the judgment is open to attack, direct or collateral, at any time.

The Supreme Court's ruling in Fisher v. District Court of the Sixteenth Judicial District of Montana, 424 U.S. 382 (1976), makes it clear that 25 U.S.C. § 372a (1976) is not a statute which bestows authority to grant adoptions. The Act of July 8, 1940, simply provides that the Secretary of the Interior may rely on adoptions legally consummated under other specific authority in the course of performing the probate functions conferred on him by Congress.

Estate of Victor Young Bear, 8 IBIA 130 (July 24, 1980)
87 I.D. 311

APPEAL (See also PLEADING, RECONSIDERATION--if included in this Index.)

Administrative Law Judge as Trier of Facts

The weight and credibility of evidence are matters properly considered by an Administrative Law Judge in the first instance. His findings, when in accord with the preponderance of the substantial and probative evidence adduced, will not be disturbed.

Where there is sufficient evidence to support the findings and the testimony is conflicting, the determination of witness credibility and the findings of fact of the Administrative Law Judge will not be disturbed because only he had the opportunity to hear and observe witnesses.

Estate of Asmakt Yumpquitat (Millie Sampson), 8 IBIA 1 (Jan. 31, 1980)

CHILDREN, ILLEGITIMATE (See also INHERITING--if included in this Index.)

Generally

The Administrative Law Judge held a full and complete hearing on the issue of decedent's possible paternity of Stephanie Young Bear and his finding that she was conceived by decedent through criminal intercourse with his purported daughter by adoption was supported by a preponderance of the evidence.

Estate of Victor Young Bear, 8 IBIA 130 (July 24, 1980)
87 I.D. 311

CLAIM AGAINST ESTATE (See also DIVORCE, LIEN, LIMITATION Index.)

Generally

The Board is not limited in its scope of review of an Administrative Law Judge's disposition of claims and may exercise the inherent authority of the Secretary to correct a manifest injustice or clear error where appropriate.

The amount of a claim which must be paid from trust assets is as crucial a decision as whether such claim should be paid at all. It would therefore be improper for the Administrative Law Judge to allow the agency superintendent to determine the amount of an approved claim which must be paid a general creditor

INDIAN PROBATE--Continued

CLAIM AGAINST ESTATE (See also DIVORCE, LIEN, LIMITATION Index.)--Continued

Generally--Continued

based on future documentation of the creditor's exhaustion of an Indian decedent's non-trust assets.

Estate of John Joseph Kipp, 8 IBIA 30 (Mar. 14, 1980)
87 I.L. 98

Proof of Claim

It would defeat the intent of Congress, which has formulated strict rules for the Secretary to follow in the management of trust property, for claims arising from alleged agreements affecting trust realty to be allowed on the basis of mere parol evidence. The potential for fraud would otherwise be too great.

Estate of John Joseph Kipp, 8 IBIA 30 (Mar. 14, 1980)
87 I.L. 98

Failure by unsecured trial creditor to appear at probate hearing coupled with filing by the tribe of an incomplete statement of account upon which the creditor's claim was based permitted the probate Administrative Law Judge to disallow the tribe's claim.

Estate of Elmer A. Olney, 8 IBIA 166 (Oct. 23, 1980)

Source of Funds for Payment

While the Department's regulations do not explicitly recite that trust assets may be utilized for the payment of general creditors' claims only after all other sources of compensation have been exhausted, this limitation is implicit in both the Department's regulatory plan for the payment of claims and in the nature of the trust relationship between the Secretary and Indian heirs of allotted lands. Any trustee, let alone the Secretary, would be derelict who generally commits trust funds to pay debts legally compensable from other sources.

Estate of John Joseph Kipp, 8 IBIA 30 (Mar. 14, 1980)
87 I.L. 98

Timely FilingGenerally

In accordance with 43 CFR 4.250, all claims against the estate of a deceased Indian held by creditors chargeable with notice of the hearing under 43 CFR 4.211(c) shall be filed prior to the conclusion of the first probate hearing and if they are not so filed, they shall be forever barred.

Estate of John Joseph Kipp, 8 IBIA 30 (Mar. 14, 1980)
87 I.L. 98

ESCHEAT

The Act of Nov. 24, 1942, 56 Stat. 1022 (25 U.S.C. § 373b (1976)) is not ambiguous. It plainly states that where, as here, a public domain allotment exceeding a value of \$2,000 lies adjacent to an Indian community and may be advantageously used for Indian purposes, such allotment shall be held in trust by the United States for such Indians as Congress (not the Secretary of the

INDIAN PROBATE--ContinuedESCHEAT--Continued

Interior) may designate, where the owner of the allotment dies intestate without heirs eligible to inherit such allotment.

Estate of Jesse J. James, 8 IBIA 205 (Dec. 8, 1980)
87 I.D. 601

EVIDENCEGenerally

The Administrative Law Judge held a full and complete hearing on the issue of decedent's possible paternity of Stephanie Young Bear and his finding that she was conceived by decedent through criminal intercourse with his purported daughter by adoption was supported by a preponderance of the evidence.

Estate of Victor Young Bear, 8 IBIA 130 (July 24, 1980)
87 I.D. 311

Newly Discovered Evidence

An Administrative Law Judge may properly deny a petition for rehearing based upon newly discovered evidence which is the same in nature as that previously considered and if heard would be merely cumulative of evidence already presented.

Estate of Asmakt Yumpquitat (Millie Sampson), 8 IBIA 1 (Jan. 31, 1980)

HEARING (See also ADMINISTRATIVE PROCEDURE, REHEARING--if included in this Index.)

Full and Complete

When a party to an Indian probate proceeding appears without an attorney, the Administrative Law Judge has a duty not to be a mere umpire, but to see that all relevant facts are developed.

Where a party to an Indian probate proceeding was not represented by counsel and was obviously unprepared for proper presentation of testimony and ignorant of significance of the facts, the Administrative Law Judge had the duty to see that all relevant facts and circumstances, both favorable and unfavorable to the parties, were brought out.

Estate of Cecelia Hummingbird French, 8 IBIA 102 (June 20, 1980)

The Administrative Law Judge held a full and complete hearing on the issue of decedent's possible paternity of Stephanie Young Bear and his finding that she was conceived by decedent through criminal intercourse with his purported daughter by adoption was supported by a preponderance of the evidence.

Estate of Victor Young Bear, 8 IBIA 130 (July 24, 1980)
87 I.D. 311

NEZ PERCE TRIBEGenerally

The original power to determine membership, including adoption, is in the tribe. After approval of an

INDIAN PROBATE--ContinuedNEZ PERCE TRIBE--ContinuedGenerally--Continued

individual for membership, a tribe retains the power to disenroll provided it follows provisions for termination of enrollment contained in its membership ordinance.

The Administrative Law Judge acted properly in relying on one of two dates stipulated to by the parties regarding a valuation date for the acquisition of land under the Nez Perce Inheritance Act.

Estate of Antcine (Ke Nape) Hill, 8 IBIA 121 (July 21, 1980)

Valuation Reports

Neither the Administrative Law Judge nor the Board is bound by the Bureau of Indian Affairs' report and findings contained therein. Instead consideration will be given to the complete record in arriving at a determination as to fair market value.

Estate of Antoine (Ke Nape) Hill, 8 IBIA 121 (July 21, 1980)

REHEARING (See also ADMINISTRATIVE PROCEDURE, REHEARING--if included in this Index.)

Generally

A showing by creditor Indian tribe made in conformity to 43 CFR 4.241(c) that its creditor's claim was facially timely and valid and that there were unusual circumstances surrounding the presentation of the claim entitles the petitioner tribe to consideration on the merits of its argument for rehearing pursuant to 43 CFR 4.241(c).

Estate of Elmer A. Olney, 8 IBIA 166 (Oct. 23, 1980)

REOPENINGGenerally

An estate closed for 50 years will not be reopened except in extraordinary circumstances to correct a manifest injustice.

Estate of John (Pete) Pixley and Emma Pixley, 8 IBIA 70 (Apr. 15, 1980)

A petition to reopen estate closed nearly 30 years ago was properly denied under authority of 43 CFR 4.242(h) where petitioner had actual notice of the hearing to probate will now alleged to be invalid and improperly construed.

Estate of Rebecca B. Coe, 8 IBIA 164 (Oct. 22, 1980)

Standing to Petition for Reopening

The regulatory entitlement to seek reopening of an estate closed for more than 3 years has been consistently interpreted by the Department as precluding petitions which are patently dilatory. It has thus been held that a petition to reopen an estate under authority of 43 CFR 4.242(h) must be filed within a reasonable time after the petitioner knew or should have known of the facts or law upon which such petition is based. In this case, it was not error for the Administrative Law Judge to deny appellant's petition for reopening for lack of timeliness where she waited

INDIAN PROBATE--ContinuedREOPENING--ContinuedStanding to Petition for Reopening--Continued

11 years after final departmental approval of her mother's will to challenge a specific devise made thereunder.

Estate of Josephine Bright Fowler, 8 IBIA 201 (Dec. 3, 1980)

STATE LAWGenerally

Under Oklahoma law, if the decedent shall have been married more than once, the spouse at the time of death shall inherit of the property not acquired during coverture with such spouse only an equal part with each of the living children of decedent.

Estate of Cecelia Hummingbird French, 8 IBIA 102 (June 20, 1980)

Applicability to Indian Probate, Intestate Estates

The Administrative Law Judge correctly chose to apply North Dakota law to determine intestate succession in Indian probate of trust lands pursuant to 25 U.S.C. § 348 (1976) where Indian decedent left non-Indian spouse and seven surviving children as heirs of her estate consisting of real property located on a reservation within North Dakota.

Estate of Malena B. Long, 8 IBIA 115 (July 10, 1980)

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)

Execution

Attesting witnesses' testimony that decedent while a patient at Wolf Point Hospital in 1965 executed will prepared by a typist at Hoxall Building was not rebutted by proof that a funded legal services agency did not begin operation in Wolf Point until 1967. The uncontradicted testimony of the attesting witnesses, which was not internally inconsistent or incredible could not, under the circumstances, be disregarded by the Administrative Law Judge.

Estate of Charles Hall, Sr., 8 IBIA 53 (Mar. 28, 1980)

Proof of Will

Testimony by two attesting witnesses to decedent's will concerning time, place and manner of execution proved will in conformity to Departmental regulations notwithstanding that will was not in the form prescribed by regulations for "self-proved will," where will offered for probate complied with all other technical requirements of Indian wills.

Estate of Charles Hall, Sr., 8 IBIA 53 (Mar. 28, 1980)

Self-proved Wills

Testimony by two attesting witnesses to decedent's will concerning time, place and manner of execution proved will in conformity to Departmental regulations notwithstanding that will was not in the form prescribed by regulations for "self-proved will,"

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Self-proved Wills--Continued

where will offered for probate complied with all other technical requirements of Indian wills.

Estate of Charles Hall, Sr., 8 IBIA 53 (Mar. 28, 1980)

Testamentary CapacityGenerally

The burden of proof as to testamentary incapacity in Indian probate proceedings is on those contesting the will.

The fact that one is aged, eccentric and occasionally forgetful or confused does not render such person incompetent to make a will.

Estate of Asmakt Yumpquitat (Willie Samson), 8 IBIA 1 (Jan. 31, 1980)

Witnesses' Testimony

Where the agency clerk to whom decedent dictated her will had known the decedent and her family since the clerk was 10 years old, and the clerk's testimony established that the testatrix knew the nature and extent of her property, remembered and discussed the personal situations of each of her children, and had made a testamentary plan by which she wished to distribute her property, the fact that one of her children benefited more than any of the others did not tend to show the decedent lacked testamentary capacity, nor was the testamentary plan unreasonable.

Where the witnesses to an Indian will were nurses at the hospital where decedent spent her last illness and testified that they had observed her conduct as a patient and her behavior with her family and felt her to be competent and able to understand what she was doing when she made a will, the reluctance of decedent's attending physician to commit himself to an opinion concerning the ability of decedent to understand "legal documents" did not tend to contradict the nurses' testimony that decedent was competent to make a will, nor did it indicate that decedent lacked testamentary capacity.

Estate of Leona Hunts Along Hale, 8 IBIA 8 (Feb. 20, 1980) 87 I.L. 64

Attesting witnesses' testimony that decedent while a patient at Wolf Point Hospital in 1965 executed will prepared by a typist at Hoxall Building was not rebutted by proof that a funded legal services agency did not begin operation in Wolf Point until 1967. The uncontradicted testimony of the attesting witnesses, which was not internally inconsistent or incredible could not, under the circumstances, be disregarded by the Administrative Law Judge.

Estate of Charles Hall, Sr., 8 IBIA 53 (Mar. 28, 1980)

Where testimony by the attesting witnesses established that decedent, although illiterate, arranged for the making of her own will, knew the nature and extent of her property, and discussed her testamentary plan in detail with the witnesses while dictating the will, the fact that her will deviated from the statutory plan for intestate succession and thereby disinherited one of her nephews did not tend to show either lack of capacity

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Testamentary Capacity--ContinuedWitnesses' Testimony--Continued

by the testatrix or the exercise of undue influence by another person.

Estate of Victoria S. Bear, 8 IBIA 117 (July 15, 1980)

Undue Influence

In order to vitiate a will, there must be something more than mere influence. There must have been undue influence at the time of the testamentary act which interfered with the free will of the testator and prevented the exercise of judgment and choice.

Here opportunity to unduly influence and suspicion thereof is insufficient to invalidate a will.

Estate of Asmakt Yumpguitat (Millie Sampson), 8 IEIA 1 (Jan. 31, 1980)

Where the direct, uncontradicted, and consistent testimony of the attesting witnesses established that decedent was competent and there was no showing of an attempt by anyone to influence him to make a will, it was error to presume fraud based upon suspicion that one of the subscribing witnesses harbored a personal desire to achieve the result reached by the testamentary plan of the will.

Estate of Charles Hall, Sr., 8 IBIA 53 (Mar. 28, 1980)

INDIAN REORGANIZATION ACT

(See also Wheeler-Howard Act--if included in this Index.)

In light of the unique history of land ownership and Federal-Indian relations on the Quinault Reservation, any Quinault allottee living on June 1, 1934, should be entitled to receive other trust land on the reservation by gift deed in accordance with the provisions of secs. 5 and 19 of the Indian Reorganization Act (25 U.S.C. §§ 465 and 479 (1976)).

Walter S. Brown v. Commissioner of Indian Affairs, 8 IBIA 183 (Oct. 28, 1980) 87 I.D. 507

INDIAN TRIBES

(See also Appeals, Indian Probate--if included in this Index.)

CREDIT ACTIVITIES

Where notice of decision by Area Director approving tribal debt collection through use of assignments of income is not shown to have been received by appellant, failure to make timely appeal from the decision will not be inferred.

Where Departmental regulation at 25 CFR 104.9 permits payment from individual trust accounts following Departmental approval, payments from the account of appellant are not barred by Montana or tribal laws establishing limitations against enforcement of stale claims.

Where only one of a series of assignments of income executed by appellant in favor of the Blackfeet Tribe in 1944, 1947, 1949, and 1950 shows Departmental

INDIAN TRIBES--ContinuedCREDIT ACTIVITIES--Continued

approval of the loan transaction described, the remaining assignments are subject to examination for compliance with the regulatory requirements. The assignment documents upon which the tribe relies to collect the claimed delinquent account must be shown to conform to the requirements of 25 CFR 104.9.

Administrative Appeal of Leo M. Kennerly, Sr. v. Billings Area Director, Bureau of Indian Affairs, 8 IEIA 106 (July 8, 1980)

DEPARTMENT REGULATIONS

Where notice of decision by Area Director approving tribal debt collection through use of assignments of income is not shown to have been received by appellant, failure to make timely appeal from the decision will not be inferred.

Where Departmental regulation at 25 CFR 104.9 permits payment from individual trust accounts following Departmental approval, payments from the account of appellant are not barred by Montana or tribal laws establishing limitations against enforcement of stale claims.

Where only one of a series of assignments of income executed by appellant in favor of the Blackfeet Tribe in 1944, 1947, 1949, and 1950 shows Departmental approval of the loan transaction described, the remaining assignments are subject to examination for compliance with the regulatory requirements. The assignment documents upon which the tribe relies to collect the claimed delinquent account must be shown to conform to the requirements of 25 CFR 104.9.

Administrative Appeal of Leo M. Kennerly, Sr. v. Billings Area Director, Bureau of Indian Affairs, 8 IEIA 106 (July 8, 1980)

ENROLLMENT

The original power to determine membership, including adoption, is in the tribe. After approval of an individual for membership, a tribe retains the power to disenroll provided it follows provisions for termination of enrollment contained in its membership ordinance.

Estate of Antoine (Ke Nape) Hill, 8 IEIA 121 (July 21, 1980)

MEMBERSHIP

It is for the Indian tribe, not this Department, to determine composition of the tribe. In 1922 the Quinault Tribe did not recognize as members thereof any Indian of the reservation, but affiliate memberships were authorized for persons of one-quarter Quileute, Hoh, Chehalis, Chinook, or Cowlitz blood, under specified conditions.

Walter S. Brown v. Commissioner of Indian Affairs, 8 IBIA 183 (Oct. 28, 1980) 87 I.D. 507

INDIANSCIVIL RIGHTS

A complaint that transfer of funds from an IIM Account violates due process provisions of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1976), lies outside the review authority of the Department of the Interior.

Clarence Runs After v. Aberdeen Area Director, Bureau of Indian Affairs, and Cheyenne River Sioux Tribe,
8 IBIA 170 (Oct. 27, 1980) 87 I.D. 501

HUNTING AND FISHING

Indian hunting and fishing rights, created by treaty or otherwise, do not include the right to take species which have been listed as threatened or endangered pursuant to the Endangered Species Act of 1973.

Application of the Endangered Species Act to Native Americans with Treaty Hunting and Fishing Rights,
M-36926 (Nov. 4, 1980) 87 I.D. 525

INDIAN CIVIL RIGHTS ACT OF 1968

A complaint that transfer of funds from an IIM account violates due process provisions of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1976), lies outside the review authority of the Department of the Interior.

Clarence Runs After v. Aberdeen Area Director, Bureau of Indian Affairs, and Cheyenne River Sioux Tribe,
8 IBIA 170 (Oct. 27, 1980) 87 I.D. 501

INTERVENTION

Intervention in proceedings before the Alaska Native Claims Appeal Board is in the discretion of the Board. 43 CFR 4.909(b).

The Board will not allow intervention following resolution of the issues on appeal.

Appeal of Bristol Bay Native Corp., 4 ANCAR 222 (May 6, 1980) 87 I.D. 164

LACHES

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

Supron Energy Corp. et al., 46 IBIA 181 (Mar. 21, 1980)

The defense of laches is not available against the Government in cases involving public lands. Even were laches determined to be an available defense, it would clearly be circumscribed by the same limitations surrounding the doctrine of estoppel.

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aida Belle Brown et al., 48 IBIA 267 (June 30, 1980) 87 I.D. 248

LACHES--Continued

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Frederick H. Larson v. State of Utah, 50 IBIA 382 (Oct. 22, 1980)

LAND SELECTIONS

The "grossly disparate value policy," under which the Department rejects States applications for lands in lieu of lands lost from their school grants by reason of settlements, etc., under 43 U.S.C. §§ 851, 852 (1976), where the value of the selected lands grossly exceeds the value of the lost base lands, is a lawful exercise of the Secretary's power and a valid ground to reject such an application. Accordingly, where the record indicates that the selected lands may be much more valuable than the base lands, the matter will be remanded to BLM for a determination of such values.

State of New Mexico (On Reconsideration), 50 IBIA 367 (Oct. 21, 1980)

LOWER COLORADO RIVER LAND USE

A determination by an Assistant Secretary of the Interior that the public need for the public land in the Lower Colorado River Land Use Area requires termination of residential permits issued for such land is not appealable to the Office of Hearings and Appeals.

Decisions by the Yuma District Office, Bureau of Land Management, not to renew residential permits in the Parker Strip Area, Lower Colorado River, consonant with a determination by an Assistant Secretary will be affirmed where it is not shown that any rights of the permittees under applicable regulations have been abridged.

Donald R. Plum et al., 4 OHA 92 (Nov. 7, 1980)

MATERIALS ACT

Where a State Highway District is denied renewal of a free use permit for a material site because a portion of the land has been enclosed within the boundary of a proposed wilderness study area, the decision will not be sustained absent a showing that the denial is supported by overriding considerations of public interest.

Shoshone Highway District #2, 45 IBIA 151 (Jan. 23, 1980)

MILLSITES

(See also Mining Claims--if included in this Index.)

GENERALLY

An application for a millsite patent is properly rejected where the applicant can allege only past use of the millsite for mining or milling purposes pursuant to 30 U.S.C. § 42 (1976). An application for a millsite patent is properly rejected where use of the millsite within the terms of 30 U.S.C. § 42 (1976) depends upon the future discovery of minerals.

So long as the legal title to public lands remains in the United States, it has the power, after proper notice and upon adequate hearing, to determine whether

MILLSITES--Continued

GENERALLY--Continued

a millsite claim is valid, and if it be found invalid, to declare it null and void.

An application for a millsite patent is properly rejected where the applicant's use and occupancy of the millsite at the time of application consists only of reclaiming the land.

United States of America v. Utah International, Inc.,
45 IBLA 73 (Jan. 17, 1980)

A millsite claim located on lands which are segregated from mineral entry by a first-form reclamation withdrawal is null and void ab initio. The fact that the land may have been used previously as a millsite is irrelevant in the absence of a showing by the claimant that he is the direct successor to a valid millsite claim located prior to the withdrawal of the land.

R. Combest, 49 IBLA 56 (July 21, 1980)

Sec. 15 of the Act of May 10, 1872, 30 U.S.C. § 42 (1976), requires that a millsite be used or occupied distinctly and explicitly for mining or milling purposes. Where a cabin on a millsite is used for residential purposes and the use of the cabin for mining purposes is only incidental to its use as a residence, the millsite must be declared null and void.

United States v. Leon R. Whitney, Cesar T. Hernandez,
51 IBLA 73 (Oct. 31, 1980)

DETERMINATION OF VALIDITY

An application for a millsite patent is properly rejected where the applicant can allege only past use of the millsite for mining or milling purposes pursuant to 30 U.S.C. § 42 (1976). An application for a millsite patent is properly rejected where use of the millsite within the terms of 30 U.S.C. § 42 (1976) depends upon the future discovery of minerals.

An application for a millsite patent is properly rejected where the applicant's use and occupancy of the millsite at the time of application consists only of reclaiming the land.

United States of America v. Utah International, Inc.,
45 IBLA 73 (Jan. 17, 1980)

After the contestant has made a prima facie case of invalidity, the millsite claimant has the burden of establishing the validity of his claim by a preponderance of the evidence. Where a millsite is not presently used or occupied, the factors to be taken into account are (1) the condition of the mill; (2) potential sources of lode or placer material to be run through the mill; (3) marketing conditions; (4) cost of operation including labor and transportation; and (5) all factors that have a bearing upon the economic feasibility of a milling operation being conducted.

United States v. Robert Chambers, 47 IBLA 102 (Apr. 23, 1980)

MILLSITES--Continued

DETERMINATION OF VALIDITY--Continued

A mineral claimant who has not made a discovery of a valuable mineral deposit within the limits of his lode or placer mining claims is not the proprietor of a "vein, lode or placer" within the context of 30 U.S.C. § 42 (1976), and cannot establish any right to a millsite claim based on such unperfected mining locations.

United States v. Leon R. Whitney, Cesar T. Hernandez,
51 IBLA 73 (Oct. 31, 1980)

PATENTS

An application for a millsite patent is properly rejected where the applicant can allege only past use of the millsite for mining or milling purposes pursuant to 30 U.S.C. § 42 (1976). An application for a millsite patent is properly rejected where use of the millsite within the terms of 30 U.S.C. § 42 (1976) depends upon the future discovery of minerals.

So long as the legal title to public lands remains in the United States, it has the power, after proper notice and upon adequate hearing, to determine whether a millsite claim is valid, and if it be found invalid, to declare it null and void.

An application for a millsite patent is properly rejected where the applicant's use and occupancy of the millsite at the time of application consists only of reclaiming the land.

United States of America v. Utah International, Inc.,
45 IBLA 73 (Jan. 17, 1980)

MINERAL LANDS

GENERALLY

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, an appraisal will be sustained in the absence of an offer of specific substantial evidence that it is incorrect.

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

There is no authority pursuant to which a pro rata or set-off formula can be read into 43 CFR 3503.3-1. Nor do the regulations require ELM to accept all tenders of rental against an anticipated unavailability of some or all of the lands included in a hardrock prospecting application, which may or may not materialize. In the event that some or all of the lands applied for are unavailable, the applicant's remedy is a refund of excess rental paid, and not a set-off against deficiencies.

Failure to remit the "full amount" of the first year's rental as defined at 43 CFR 3503.3-1(a), means failure to remit either a \$20 minimum rental for 80 or fewer acres, or the amount computed for the total acreage if known, or the total acreage computed on the basis of 40 acres for each smallest subdivision of the acreage involved in the application. An application which is not accompanied by the full amount of advance rental is properly rejected.

The regulation pertaining to attorneys-in-fact, as it relates to corporate applicants, 43 CFR 3502.6-1(a)(3), calls for evidence that the individual who signs an application is also empowered to execute the instrument and bind the corporation. Where an existing file of corporate qualifications sets forth the names of individuals or corporate officers authorized to act for the corporation in mineral applications and leases, and the terms of such authority, the

MINERAL LANDS--Continued

GENERALLY--Continued

requirements of 43 CFR 3502.6 are fully satisfied by reference to such file. 43 CFR 3502.7-2.

Regarding curable defects in a hardrock prospecting permit application, 43 CFR 3511.2-4(b), priority exists as of the date of cure. Compliance with that regulation establishes priority for those lands not included in junior acceptable applications or otherwise unavailable for hardrock prospecting.

Duval Corp., Amax Exploration, Inc., 45 IBLA 355 (Feb. 7, 1980)

The purpose of 30 U.S.C. § 38 (1976) whereby a person or association may establish a right to patent lands which said person or association has held and worked for a period equal to the statute of limitations is to obviate proving formal compliance with requirements for locating a claim, but it does not dispense with proof of discovery.

United States v. Joseph R. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

Where applicants for a preference right lease for hardrock minerals fail to present evidence showing the quantity and quality of the minerals discovered in the area covered by the prospecting permit, but rather present evidence showing only an extremely deep deposit of low value ore, which evidence is inadequate to show that they have made a discovery of a valuable mineral deposit, and they do not dispute the findings relied on by the Bureau of Land Management, their application is properly rejected.

John D. Archer, Elizabeth B. Archer, 47 IBLA 268 (May 13, 1980)

DETERMINATION OF CHARACTER OF

To establish the mineral character of lands, it must be shown that the known conditions are such as to engender the belief that the lands contain mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end. The mineral character of land may be established by inference without the exposure of the mineral deposit for which the land is supposed to be valuable. Lands containing mineral of such quantity and value as to warrant a prudent man in the expenditure of his time and money with a reasonable expectation of developing a paying mine are disposable only under the mining laws.

Edith Szmyd, Beulah Hoth, 50 IBLA 61 (Sept. 15, 1980)

A single discovery of mineral within a placer mining claim does not conclusively establish the mineral character of all the land included in the location. Whether the land embraced in the claim is mineral in character is an issue which remains open to investigation and determination by the Department until patent issues. The contestee must establish that each 10-acre tract within the entire claim is mineral in character, failing in which any nonmineral 10-acre tract is properly excluded from the patent application.

United States v. Cameron Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980)

87 I.D. 535

MINERAL LANDS--Continued

MINERAL RESERVATION

Interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether scoria is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

A patent of land under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1970), was not generally intended to give the grantee the right to use the land for mineral development, but mineral development was to proceed only under the mineral laws.

The mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1970), includes mineral substances which can be taken from the soil and which have a separate value, including those marketable minerals found at or near the surface, and which have no rare or exceptional character, regardless of whether they are subject to disposition under 30 U.S.C. § 601 (1976) or other existing statutory authority.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Under the Stock-Raising Homestead Act, 43 U.S.C. §§ 291-301 (1970), there is no equitable basis for excluding valuable deposits of scoria from the scope of a Federal mineral reservation although the Government has successfully contended in other cases that common or surface minerals are not included in mineral reservations to the United States, because the rules of construction of private conveyances differ from those which govern Federal grants, and because 30 U.S.C. § 54 (1976) provides compensation for damage to surface owners' crops, improvements and grazing values.

Scoria which is valuable for surfacing roads is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

A patent issued pursuant to the Homestead Act of May 20, 1862, 43 U.S.C. § 161 (1976), reserving to the United States all coal under the Act of June 22, 1910 (36 Stat. 583) and sodium under the Act of July 17, 1914 (38 Stat. 509) in the lands described by such patent, cannot be construed as reserving to the United States other minerals, such as oil and gas, which are not specifically reserved therein.

Circular 1021, July 21, 1925, instructed the land offices to impress upon a nonmineral application a reservation of those minerals for which the land had been embraced in applications for permit or lease.

Lee F. Williamson, 48 IBLA 329 (July 3, 1980)

MINERAL LANDS--Continued

NONMINERAL ENTRIES

A patent issued pursuant to the Homestead Act of May 20, 1862, 43 U.S.C. § 161 (1976), reserving to the United States all coal under the Act of June 22, 1910 (36 Stat. 583) and sodium under the Act of July 17, 1914 (38 Stat. 509) in the lands described by such patent, cannot be construed as reserving to the United States other minerals, such as oil and gas, which are not specifically reserved therein.

Circular 1021, July 21, 1925, instructed the land offices to impress upon a nonmineral application a reservation of those minerals for which the land had been embraced in applications for permit or lease.

Lee E. Williamson, 48 IBLA 329 (July 3, 1980)

PROSPECTING PERMITS

A hardrock prospecting permit application is properly rejected where the deed conveying the subject lands to the United States expressly excepts therefrom all minerals and rights thereunder outstanding of record in third parties.

Exxon Corp., 45 IBLA 260 (Feb. 4, 1980)

There is no authority pursuant to which a pro rata or set-off formula can be read into 43 CFR 3503.3-1. Nor do the regulations require BLM to accept all tenders of rental against an anticipated unavailability of some or all of the lands included in a hardrock prospecting application, which may or may not materialize. In the event that some or all of the lands applied for are unavailable, the applicant's remedy is a refund of excess rental paid, and not a set-off against deficiencies.

Failure to remit the "full amount" of the first year's rental as defined at 43 CFR 3503.3-1(a), means failure to remit either a \$20 minimum rental for 80 or fewer acres, or the amount computed for the total acreage if known, or the total acreage computed on the basis of 40 acres for each smallest subdivision of the acreage involved in the application. An application which is not accompanied by the full amount of advance rental is properly rejected.

The regulation pertaining to attorneys-in-fact, as it relates to corporate applicants, 43 CFR 3502.6-1(a)(3), calls for evidence that the individual who signs an application is also empowered to execute the instrument and bind the corporation. Where an existing file of corporate qualifications sets forth the names of individuals or corporate officers authorized to act for the corporation in mineral applications and leases, and the terms of such authority, the requirements of 43 CFR 3502.6 are fully satisfied by reference to such file. 43 CFR 3502.7-2.

Regarding curable defects in a hardrock prospecting permit application, 43 CFR 3511.2-4(h), priority exists as of the date of cure. Compliance with that regulation establishes priority for those lands not included in junior acceptable applications or otherwise unavailable for hardrock prospecting.

Duval Corp., Amax Exploration, Inc., 45 IELA 355 (Feb. 7, 1980)

A hardrock prospecting permit erroneously issued for lands already subject to such a permit must be canceled to the extent of conflict.

Reliance on incomplete records maintained by Federal land offices cannot confer upon a hardrock

MINERAL LANDS--Continued

PROSPECTING PERMITS--Continued

prospecting permittee any rights in derogation of a prior permittee.

ASARCO, Inc., 47 IBLA 14 (Apr. 11, 1980)

BLM properly applied the regulations set forth in 43 CFR Subparts 3520-21, effective May 7, 1976, to preference right lease applications pending on the effective date of such regulations.

BLM properly excluded from an applicant's demonstrated reserves of trona those reserves which the applicant, by stipulation in the prospecting permit, had agreed would not be subject to mining or recovery operations.

An exchange application tendered pursuant to 43 CFR Subpart 3526 is properly rejected by BLM where a preference right lease applicant has not demonstrated to the Secretary that he has a preference right to a lease.

A hearing is properly ordered pursuant to 43 CFR 3521.1-1(j) where a preference right lease application for trona is rejected and the applicant has alleged in his application facts sufficient to show that he is entitled to a lease. At the hearing, the permittee shall have both the burden of going forward and the burden of proof, and must show by a preponderance of the evidence that he has discovered a valuable deposit of trona and that the land is chiefly valuable therefor.

John S. Wold, Eugene V. Simons, 48 IELA 106 (May 30, 1980)

Where a prospecting permit applicant is required to furnish evidence of its qualifications to hold the permit, proper reference to its corporate qualifications statement on file in any Bureau of Land Management office fully satisfies the requirements of 43 CFR 3502.1-3.

Where, under 43 CFR 3502.7, evidence of qualifications to hold a prospecting permit must be submitted simultaneously with other application materials and such evidence is not submitted with the application, the application is deficient, the filing is ineffective, and no priority attaches. However, where an applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3502.7 is satisfied, an effective filing occurs, and priority attaches on the date of the cure.

Leon F. Scully, Jr., Eileen Scully, 50 IELA 19 (Sept. 9, 1980)

Where on appeal an application for a hardrock prospecting permit for acquired lands in a national forest has been amended as to the lands and minerals concerned, the application may be remanded to Bureau of Land Management for review and referral to the Forest Service for metes and bounds description of any additional areas recommended for exclusion.

Evelyn Evrard, 50 IELA 377 (Oct. 21, 1980)

MINERAL LEASING ACT

(See also Bureau of Land Management, Coal Leases & Permits, Geothermal Leases, Oil & Gas Leases, Phosphate Leases & Permits, Potassium Leases & Permits, Sodium Leases & Permits--if included in this Index.)

GENERALLY

A natural brine containing water and ions of sodium, potassium, calcium, magnesium, and chlorine may be considered a valuable deposit of a sodium compound within the meaning of 30 U.S.C. § 262 (1976) if either of two contingencies occur. First, sodium must be present in sufficient quantity as to be commercially valuable. Second, sodium must be essential to the molecular structure of the valuable mineral.

The Administrative Law Judge gave proper weight to Government testimony in dismissing the Government's contest complaint where the evidence supported a finding of the existence of a sodium-calcium-chloride brine, but did not support a finding that such brine was "known to be valuable" for a Leasing Act mineral.

The existence of a "related product" within the meaning of 30 U.S.C. § 262 (1976) presumes the existence of a valuable sodium compound deposit.

United States v. Levon Bardsley (Trustee), Marlene M. Bardsley, Individually and as Administratrix of the Estate of Donald H. Bardsley (Deceased), 45 IBLA 367 (Feb. 7, 1980)

BLM properly applied the regulations set forth in 43 CFR Subparts 3520-21, effective May 7, 1976, to preference right lease applications pending on the effective date of such regulations.

BLM properly excluded from an applicant's demonstrated reserves of trona those reserves which the applicant, by stipulation in the prospecting permit, had agreed would not be subject to mining or recovery operations.

An exchange application tendered pursuant to 43 CFR Subpart 3526 is properly rejected by BLM where a preference right lease applicant has not demonstrated to the Secretary that he has a preference right to a lease.

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John S. Wold, Eugene V. Simons, 48 IBLA 106 (May 30, 1980)

Sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), is not applicable to on-lease oil and gas production facilities which are included in a surface use and operations plan, and which are authorized by the approval of an application to conduct leasehold operations or construction activities.

Sec. 29 of the Mineral Leasing Act of 1920, 30 U.S.C. § 186 (1976), has consistently been interpreted as not providing authority separate from sec. 28 of the Mineral Leasing Act, 30 U.S.C. § 185 (1976), for oil and gas pipeline rights-of-way. Instead, it reserves to the United States the right to allow other rights-of-way or to lease other minerals on Federal land already leased for the extraction of one mineral, and allows the reservation of the right to dispose of the surface of land leased for mineral extraction "insofar as said surface is not necessary to the use of the lessee in extracting and removing deposits

MINERAL LEASING ACT--Continued

GENERALLY--Continued

thereon."

The Secretary has broad power to regulate all on-lease activities by oil and gas lessees and operators pursuant to the conditions contained in oil and gas leases and his general regulatory authority under the Mineral Leasing Act. The procedures for regulating activities on oil and gas leases, established under Secretarial Order 2948 and the BLM-USGS Cooperative Procedures Agreement implementing that order, reserve to the Department the authority to protect the United States legal interests in the property. The Secretary has broad discretion either to continue this procedure, or to substitute any other delegation of his authority and any other reasonable regulatory procedure which he concludes would equally protect the United States interests.

All facilities related to an oil and gas lease which are located on Federal land outside the lease, regardless of their nature, may be constructed only after appropriate rights-of-way have been granted. Similarly, on-lease oil and gas transportation facilities and on-lease commercial facilities require rights-of-way. Depending on the nature of the facility, the right-of-way would be granted pursuant to either sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), or Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976).

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.L. 291

Failure to maintain a claim by doing assessment work each year may constitute evidence of abandonment. Independently, a failure to substantially comply with the requirement that annual assessment work be performed, 30 U.S.C. § 28 (1976), requires a finding that the claim has not been "maintained" within the meaning of sec. 37 of the Mineral Leasing Act, 30 U.S.C. § 193 (1976), and may result in a forfeiture of the claim. Hickel v. The Oil Shale Corp., 400 U.S. 48 (1970).

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Adabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.L. 248

In the context of a readjustment of the terms of a coal lease under the Mineral Leasing Act, the Bureau of Land Management erred in rejecting a lessee's attempts to negotiate the new proposed terms of a lease ripe for readjustment under the provisions of the Act solely on the ground that the lessee's objections to the proposed terms were received 3 days after the regulatory deadline.

United States Steel Corp., 50 IBLA 252 (Sept. 30, 1980)

LANDS SUBJECT TO

Land is "known to be valuable" for a mineral subject to the Mineral Leasing Act of Feb. 25, 1920, as amended, when "known conditions at the time [of location] were plainly such as to engender the belief that the land contained mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end." United States v. Southern Pacific Co., 251 U.S. 1, 13-14 (1919); Piawand Coal Co. v. United States, 233 U.S. 236, 239-40 (1914). In determining whether mineral deposits are such as to render their extraction profitable and justify expenditures, extrinsic factors, such

MINERAL LEASING ACT--Continued

LANDS SUBJECT TO--Continued

as the cost of extraction, processing, transportation, and marketing must be considered.

United States v. Levon Bardsley (Trustee), Marlene M. Bardsley, Individually and as Administratrix of the Estate of Donald H. Bardsley (Deceased), 45 IBLA 367 (Feb. 7, 1980)

Lands situated within the boundaries of incorporated cities, towns or villages are excluded from oil and gas leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976).

Ed Pendleton, 45 IBLA 398 (Feb. 13, 1980)

L. A. Walstrom, Jr., 46 IBLA 389 (Apr. 10, 1980)

LITIGATION

When an assignment of a phosphate lease has been approved and there is a controversy as to the validity of the assignment, the Department will not rescind approval of the assignment where no error or irregularity is shown therein, and will maintain the status quo where the parties have instituted litigation to resolve their dispute.

John D. and Elizabeth Archer, 46 IBLA 203 (Mar. 24, 1980)

ROYALTIES

The Crude Oil Windfall Profit Tax Act, P.L. 96-223, 94 Stat. 229 (1980) imposes the windfall profit tax on Federal oil royalty revenue. The states have no economic interest, as that phrase is used in the Windfall Profit Tax Act, in Federal royalty revenue that would exempt their share from taxation. Moreover, revenue from the windfall profit tax cannot be treated as royalty revenue and be distributed to the states under sec. 35 of the Mineral Leasing Act, as amended, 30 U.S.C. § 191 (1976). Accordingly, the states' share of Federal oil royalties must be based upon after-tax royalty revenue.

Effect of the Crude Oil Windfall Profit Tax Act of 1980 on the States' Share of Federal Oil Royalties, M-36929 (Dec. 30, 1980) 87 I.D. 661

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency, U.S., the United States Army Corps of Engineers, having jurisdiction of acquired land described in a lease offer be obtained prior to the issuance of an acquired lands lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Jacobs Contracting Corp., 45 IBLA 40 (Jan. 14, 1980)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

GENERALLY--Continued

Where applicants for a preference right lease for hardrock minerals fail to present evidence showing the quantity and quality of the minerals discovered in the area covered by the prospecting permit, but rather present evidence showing only an extremely deep deposit of low value ore, which evidence is inadequate to show that they have made a discovery of a valuable mineral deposit, and they do not dispute the findings relied on by the Bureau of Land Management, their application is properly rejected.

John D. Archer, Elizabeth B. Archer, 47 IEIA 266 (May 13, 1980)

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency, U.S., the United States Army Corps of Engineers, having jurisdiction of acquired land described in a lease offer be obtained prior to the issuance of an acquired lands lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Jacobs Contracting Corp., 45 IBLA 40 (Jan. 14, 1980)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Arthur E. Reinhardt and Irwin Rubenstein, 46 IEIA 27 (Feb. 20, 1980)

LANDS SUBJECT TO

A hardrock prospecting permit application is properly rejected where the deed conveying the subject lands to the United States expressly excepts therefrom all minerals and rights thereunder outstanding of record in third parties.

Exxon Corp., 45 IEIA 260 (Feb. 4, 1980)

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under sec. 3 of the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. § 352 (1976).

Whitney H. Marvin, 46 IEIA 290 (Mar. 31, 1980)

MINERALS EXPLORATION

Where applicants for a preference right lease for hardrock minerals fail to present evidence showing the quantity and quality of the minerals discovered in the area covered by the prospecting permit, but rather present evidence showing only an extremely deep deposit of low value ore, which evidence is inadequate to show that they have made a discovery of a valuable mineral deposit, and they do not dispute the findings relied on

MINERALS EXPLORATION--Continued

by the Bureau of Land Management, their application is properly rejected.

John D. Archer, Elizabeth E. Archer, 47 IBLA 268 (May 13, 1980)

An application for permit to drill for oil and gas in a "potash enclave" in a designated "Potash Area" is properly denied where the applicant fails to show that its application comes within either of the two exceptions to the policy in favor of potash development enunciated in an order of the Secretary dated Oct. 7, 1975, 40 FR 51486 (Nov. 5, 1975).

Bass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

MINING CLAIMS

(See also Hearings, Millsites, Multiple Mineral Development Act, Surface Resources Act--if included in this Index.)

GENERALLY

A Presidential proclamation, which extended the boundaries of a forest reserve and which specifically stated that prior proclamations respecting the reserve were "superseded," had the effect of and was construed as restoring to entry lands earlier withdrawn by a Secretarial order which reserved from public entry, for protection of giant sequoia trees, a township situated within the boundaries of the forest reserve. This conclusion is particularly compelling in view of the long continued course of administrative action treating the subject township as having been restored to entry for purposes of prospecting, locating and developing mineral resources, subject to compliance with the rules and regulations pertaining to forest reserves.

Dolores Olsen and Wesley E. Mace, et al., 45 IBLA 232 (Feb. 4, 1980)

Where regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976 require reference to the Bureau of Land Management serial number under which a mining claim is recorded for future recordings, a claimant fails to include the number when he files a notice of assessment work, and he is specifically informed of this and other requirements, but fails to furnish the number, the filing is unacceptable, and failure to comply with the filing requirements constitutes abandonment of the claim, as provided by the Act.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

In order to obtain a temporary deferment, a claimant must file with the authorized officer of the proper office a petition in duplicate requesting such deferment. The applicant must attach to one copy thereof a copy of the notice to the public required by the Act which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded.

A petition for deferment of annual assessment work is properly denied where a claimant's mining claims and millsites have been declared null and void by the Department.

Andrew L. Freese, 50 IBLA 26 (Sept. 9, 1980)

87 I.L. 395

MINING CLAIMS--ContinuedGENERALLY--Continued

In determining whether a claimant has made a discovery, the present costs of mining, removing, and marketing the minerals involved are properly considered.

United States v. Cornelius E. Mannix, 50 IBLA 110 (Sept. 24, 1980)

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The fact that such contest challenges the validity of certain mining claims and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. R. H. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Leon R. Whitney, Cesar T. Fernandez, 51 IBLA 73 (Oct. 31, 1980)

Under Andrus v. Shell Oil Co., ___ U.S. ___, 64 L.Ed.2d 593 (1980), 48 U.S.L.W. 4603 (June 2, 1980), oil shale is a prospectively valuable mineral and therefore present marketability need not be shown to demonstrate discovery.

To demonstrate a sufficient discovery of oil shale under Freeman v. Summers, 52 L.Ed. 201 (1927), a mining claimant must show that mineral was disclosed on or before Feb. 25, 1920, in such situation and such formation that he can follow the deposit to depth with reasonable assurance that paying minerals will be found. An isolated bit of mineral, not connected with or leading to substantial prospective values, is not a sufficient discovery.

United States v. Cameron Catlin Fohme et al., United States v. Exxon Corp. et al., United States v. Adelaide Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980)

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ABANDONMENT

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which the claim was recorded in the BLM office, the claim is properly deemed conclusively to have been abandoned.

Willene Minnier, 45 IBLA 1 (Jan. 8, 1980)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Where a mining claimant submits a copy of a notice of location in the BLM's Riverside, California, District Office, for a claim located after Oct. 21, 1976, he has not complied with 43 CFR 3833.1-2(b), even though the material was submitted in the District Office before the expiration of the 90-day deadline, as the notice has not been filed in the "proper BLM office," which is the BLM California State Office in Sacramento, as expressly provided by 43 CFR 3833.0-5(g) and 1821.2-1(d). Where the District Office forwards the information to the State Office but it does not arrive until after the 90-day deadline has passed, owing to its extremely late submission to the District Office, it is untimely, and the claim is properly declared abandoned and void under 43 CFR 3833.4(a).

C. F. Linn, 45 IBLA 156 (Jan. 23, 1980)

"Copy of the Official Record of the Notice or Certificate of Location." Under the revised definition of the term at 43 CFR 3833.0-5(i) (1979), a duplicate of a notice of location which has been filed with the local recorder is a "copy of the official record of the notice or certificate of location," even though it is not stamped by the local recorder and does not include a reference to the local record, and is therefore acceptable under 43 CFR 3833.1-2(b) if tendered within 90 days of the date of location.

James E. Strong, 45 IBLA 386 (Feb. 13, 1980)

Where regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976 require reference to the Bureau of Land Management serial number under which a mining claim is recorded for future recordings, a claimant fails to include the number when he files a notice of assessment work, and he is specifically informed of this and other requirements, but fails to furnish the number, the filing is unacceptable, and failure to comply with the filing requirements constitutes abandonment of the claim, as provided by the Act.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

Under 43 CFR 3833.2-1(b) (1978), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, prior to Dec. 31 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

Robert W. Hansen, Federal Bentonite Co., 46 IBLA 93 (Feb. 28, 1980)

The owner of an unpatented mining claim located before Oct. 21, 1976, has until Oct. 22, 1979, in which to record his/her notice of location with BLM. However, if he/she elects to record in 1977, he/she must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1978, and each year thereafter, or the claim will be conclusively deemed to have been abandoned.

Josephine M. Buchen, 46 IBLA 298 (Mar. 31, 1980)

Lo Lo M. Cosby, 46 IBLA 363 (Apr. 8, 1980)

Clarence W. and Anna F. Owens, 47 IBLA 149 (May 6, 1980)

MINING CLAIMS--Continued

ABANDONMENT--Continued

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

Phyllis Wood et al., 46 IBLA 309 (Apr. 4, 1980)

Lawrence Jacob, Freeda Jacob, 49 IEIA 137 (July 28, 1980)

Brewery Hill Mining Co., Inc., 49 IEIA 197 (Aug. 6, 1980)

Lost Follack Mining and Exploration, Ltd., 50 IEIA 227 (Sept. 30, 1980)

Under 43 CFR 3833.1-2 the owner of an unpatented mining claim, millsite, or tunnel site located on or before Oct. 21, 1976, must file (file shall mean being received and date stamped by the proper BLM office) an official copy of the notice of location with the proper BLM office on or before Oct. 22, 1979, or the claim will be conclusively deemed to have been abandoned under 43 CFR 3833.4. Mining claimants are not relieved of the requirement to file timely their documents when they mail them, as the documents cannot be considered as filed until they are received by the proper office of the Bureau of Land Management.

Carl Oberg, 46 IBLA 319 (Apr. 4, 1980)

43 CFR 3833.1-2(a) states that the owner of an unpatented mining claim, millsite, or tunnel site on Federal lands on or before Oct. 21, 1976, shall file (file shall mean being received and date stamped by the proper BLM office) on or before Oct. 22, 1979, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. The depositing of a copy of the document in the mail does not constitute a "filing" within the context of the regulation.

Wayne Van Dyke, 46 IEIA 358 (Apr. 8, 1980)

Earl A. Tenley, 47 IEIA 200 (May 7, 1980)

Earleen Porter, 48 IEIA 55 (May 29, 1980)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1977, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

Northwest Mining & Mercantile, Inc., 46 IEIA 360 (Apr. 8, 1980)

Geomet Exploration, Inc., 47 IEIA 135 (Apr. 30, 1980)

Robert R. Eisenman, 50 IEIA 145 (Sept. 26, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1, the owner of an unpatented mining claim located in calendar year 1977, must file an affidavit of assessment work or a notice of intention to hold the mining claim on or before Dec. 30 of the following calendar year, 1978, or

MINING CLAIMS--ContinuedABANDONMENT--Continued

the claims will be conclusively deemed to have been abandoned and will be declared void.

Vernon M. and Barbara R. Johnson, 47 IBLA 43 (Apr. 11, 1980)

The owner of an unpatented mining claim, located after Oct. 21, 1976, must file within 90 days after the date of location, in the proper BLM office, a copy of the certificate of location of the claim.

The failure to file the instruments required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, constitutes an abandonment of the mining claim, and the claim is properly deemed to be void.

Eric Murray, 47 IBLA 112 (Apr. 28, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the date of location or the claim will be conclusively deemed to have been abandoned.

Betty and Clarence L. Guffey, 47 IBLA 175 (May 7, 1980)

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Alva F. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Dollie L. Glaab, 48 IBLA 404 (July 11, 1980)

Where a mining claimant submits a copy of a notice of location to the BLM District Office at Burley, Idaho, for a claim located prior to Oct. 21, 1976, he has not complied with 43 CFR 3833.1-2(a), even though the material was submitted to the District Office before the expiration of the statutory deadline of Oct. 22, 1979, as the location notice has not been filed in the "proper BLM office," which is the BLM Idaho State Office, in Boise, as expressly provided by 43 CFR 3833.0-5(g) and 1821.2-1(d), and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

Roy Tremayne, 47 IBLA 289 (May 15, 1980)

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it properly is declared abandoned and void.

Wilbur Martin, 47 IBLA 370 (May 21, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the

MINING CLAIMS--ContinuedABANDONMENT--Continued

mining claim prior to Dec. 31 of the calendar year following the date of location or the claim will be deemed conclusively to have been abandoned.

Where an appellant asserts on appeal that proof of labor was mailed timely to the Bureau of Land Management, but there exists no record of their receipt, the documents cannot be considered as filed.

Gary I. Parton, J. Marinelli, R. Nixon, 47 IBLA 386 (May 21, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned.

Where a claimant is not required to do any assessment work under the general mining laws, but is required nevertheless to file under 43 CFR 3833.2-1(c), he must file a notice of intention to hold the claims in lieu of an affidavit of assessment work performed.

William J. Walker, Lewis Sandberg, 47 IBLA 389 (May 22, 1980)

Where the owner of an unpatented mining claim, located by a predecessor in 1977, fails to file an affidavit of assessment work as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(c), on or before Dec. 30 of the calendar year following the calendar year in which the claim was located, the claim is properly deemed to have been abandoned.

White Star Foundation, Inc., 48 IBLA 96 (May 29, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold on or before Oct. 22, 1979, his claim is deemed conclusively to be abandoned and to be null and void.

Kenneth K. Parker, 48 IBLA 129 (May 30, 1980)

Century XXI Mining, Inc., 49 IBLA 166 (July 30, 1980)

Under 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

Ronald Foraker, 48 IBLA 132 (May 30, 1980)

Anna Schalkewicz, 48 IBLA 134 (May 30, 1980)

Zoss Associates, 50 IBLA 164 (Sept. 30, 1980)

MINING CLAIMS--ContinuedABANDONMENT--Continued

The owner of a mining claim located on or before Oct. 21, 1976, had until Oct. 22, 1979, to record a copy of the location notice with Bureau of Land Management and pay the required service fee, and where the fee was not paid 43 CFR 3833.1-2(d) requires that the notice of location be returned as unacceptable.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to timely file an instrument required by 43 CFR 3833.1-2 constitutes an abandonment of the mining claim, and it is deemed to be void.

George B. Flewelling, 48 IBLA 141 (May 30, 1980)

Under 43 CFR 3833.2-1(a) and 3833.4(a), the owner of an unpatented mining claim located before Oct. 21, 1976, notice of which is recorded with BLM in the calendar year 1977, must file an affidavit of assessment work or a notice of intention to hold the claim on or before Dec. 30 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned.

Betty Norton, 48 IBLA 184 (June 9, 1980)

Under 43 CFR 3833.2-1(a), the owner of an unpatented mining claim must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of each calendar year following the year of recordation of the claim with BLM, or the claim will be conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Victor DeLange, 48 IBLA 222 (June 16, 1980)

Failure to maintain a claim by doing assessment work each year may constitute evidence of abandonment. Independently, a failure to substantially comply with the requirement that annual assessment work be performed, 30 U.S.C. § 28 (1976), requires a finding that the claim has not been "maintained" within the meaning of sec. 37 of the Mineral Leasing Act, 30 U.S.C. § 193 (1976), and may result in a forfeiture of the claim. Hickel v. The Oil Shale Corp., 400 U.S. 48 (1970).

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aldabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b) and 3833.4, the owner of an unpatented mining claim located after Oct. 21, 1976, shall file within 90 days after the date of location in the proper BLM office a copy of the official record of the notice or certificate of location, or the claim must be deemed abandoned and void.

James White, 48 IBLA 346 (July 3, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Armando Majalca, 48 IBLA 351 (July 11, 1980)

MINING CLAIMS--ContinuedABANDONMENT--Continued

The owner of an unpatented mining claim located on Federal lands excluding lands within a unit of the National Park System, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, after Oct. 21, 1976, shall, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Where the claimant does not do so, the claims are deemed abandoned and properly declared void.

Don and Mary L. Clark, 49 IBLA 11 (July 15, 1980)

Under 43 U.S.C. § 1744 (1976) if the owner of a mining claim located on or before Oct. 21, 1976, does not file a copy of the recorded notice or certificate of location by Oct. 22, 1979, the claim must be deemed abandoned and void.

Frank Otegui, 49 IBLA 40 (July 21, 1980)

The owner of mining claims located prior to Oct. 21, 1976, must file evidence of annual assessment work performed on the claims during the preceding assessment year, or, where appropriate, notices of intention to hold the claims, no later than on or before Oct. 22, 1979, or the claims are properly declared abandoned and void.

"Preceding assessment year." The "preceding assessment year" is the assessment year most recently completed. Thus, the requirement that evidence of annual assessment work completed during the "preceding assessment year" be filed on or before Oct. 22, 1979, concerns the assessment year ending at noon on Sept. 1, 1979.

A mining claimant may file a notice of intention to hold its mining claims in lieu of evidence of annual assessment work performed thereon only where the obligation to perform the annual assessment work has been suspended or deferred or has not yet accrued. Where the record indicates no such circumstances and shows to the contrary that the claimant was required to and did perform this work in the preceding assessment year, filing notices of intention will not suffice.

A notice of intention to hold a group of mining claims must meet the requirements set out at 43 CFR 3833.2-3(a), and must include, *inter alia*, a clear statement of the reason why the annual assessment work was not performed. This requirement is impossible of satisfaction where the claimant in fact did the assessment work.

A failure to file evidence of annual assessment work for the preceding assessment year is not excused by 43 CFR 3833.4(b), which provides that a filing which complies with FLPMA may not be deemed invalid because of its failure to meet the requirements of other laws.

Alaskamin Co., 49 IBLA 43 (July 21, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file a copy of the certificate or notice of location of the claim with BLM within 90 days of the date of location of the claim, failing which BLM properly rejects the untimely tendered document and declares the claim abandoned and void.

Henry D. Friedman, 49 IBLA 97 (July 28, 1980)

MINING CLAIMS--ContinuedABANDONMENT--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a), 3833.2-1(a), 3833.4, for a mining claim located on or before Oct. 21, 1976, a copy of the notice or certificate of location and evidence of assessment work or notice of intention to hold must be filed with the Bureau of Land Management by Oct. 22, 1979, or the claim shall be deemed abandoned and void.

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed conclusively to have been abandoned.

Margaret J. Wilson, 49 IBLA 228 (Aug. 12, 1980)

James V. Brady, 51 IBLA 361 (Dec. 29, 1980)

For a mining claim located on or before Oct. 21, 1976, under 43 U.S.C. § 1744 (1976), 43 CFR 3833.1-2(a) and 3833.4, a copy of the recorded notice or certificate of location must be filed with the appropriate BLM state office by Oct. 22, 1979, or the claim shall be conclusively deemed to be abandoned and void.

Virgal M. Taylor, Elizabeth Hutton, 49 IBLA 329 (Aug. 25, 1980)

Under 43 CFR 3833.1-2(a) and 3833.4(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice or certificate of location with the Bureau of Land Management by Oct. 22, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

Hugh A. Johnson, 50 IBLA 47 (Sept. 9, 1980)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file an instrument required by secs. 3833.1 and 3833.2 of this title within the time period prescribed therein shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it shall be void.

Tod Anderson, 50 IBLA 66 (Sept. 17, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management Office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

Don Sagmoen, Perry Adkison, Ward I. Jones, 50 IBLA 84 (Sept. 17, 1980)

MINING CLAIMS--ContinuedABANDONMENT--Continued

Where a person has located a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FIFMA apply, and the owner has until Oct. 22, 1979, to record the location notice with ELM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file timely with the proper office of the Bureau of Land Management a copy of the notice or certificate of location of a mining claim is deemed conclusively to constitute an abandonment of the mining claim by the owner.

The Department of the Interior, as agency of Executive Branch of Government, is not proper forum to decide whether or not as to mining claims the recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Abner Weed, 50 IBLA 141 (Sept. 26, 1980)

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper ELM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording with ELM of the copy of the notice or certificate of location, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

The owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper ELM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Where the claimant does not do so, the claims are deemed abandoned and properly declared void.

Milburn Cowdrey, Eugene A. Cunningham, 50 IBLA 212 (Sept. 30, 1980)

Where the owners of an unpatented mining claim located prior to Oct. 21, 1976, fail to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, having filed a copy of the notice of location with ELM during calendar year 1978, the claim is properly deemed to be abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR L.Ed.2d 593 (1980), 48 U.S.L.W. 4603 (June 2, 1980),

Where appellants assert on appeal that evidence of assessment work was timely mailed to ELM, but there exists no record of its receipt the documents cannot be considered as filed.

Donald L. Vessely et al., 50 IBLA 277 (Oct. 6, 1980)

Where the owner of unpatented mining claims located before Oct. 21, 1976, files copies of the notices of location of these claims prior to the Oct. 22, 1979, deadline for so doing, but fails to file evidence of annual assessment work during the preceding assessment year on or before this deadline, the claims are properly declared abandoned and void.

Stanley Bishop, 50 IBLA 371 (Oct. 21, 1980)

Joseph V. Dodge, d.b.a. Rocky Mountain Mineral Co., 50 IBLA 394 (Oct. 24, 1980)

MINING CLAIMS--ContinuedABANDONMENT--Continued

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1978, or the claims are conclusively deemed to have been abandoned by the owner and to be void.

Henry H. Schmid, Judith A. Schmid, 50 IBLA 406 (Oct. 24, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, was required to file with BLM evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

Peter and Linda Hasson, 51 IBLA 17 (Oct. 28, 1980)

Under 43 CFR 3833.1-2(d), the owner of unpatented mining claims must tender a filing fee of \$5 per claim when filing recordation information, or ELM properly rejects the filing as unacceptable. Where he submits information on or before the Oct. 22, 1979, deadline, but does not include this fee on or before this date, BLM properly regards this filing as unacceptable, so that the claims became void under 43 CFR 3833.4 when the deadline passed without an acceptable filing.

Where the owner of two mining claims files recordation information for two claims with BLM, but tenders only \$5 as a filing fee, this amount is insufficient to provide the required \$5 fee for both claims, and BLM properly may recognize only one claim as valid. In these circumstances, BLM properly requires the owner to select which claim to validate.

Eva Holmes et al., 51 IBLA 140 (Nov. 20, 1980)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1978, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30, 1979, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

Michael Jon McFarland, 51 IBLA 173 (Nov. 26, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void.

Pearl Kelly, 51 IBLA 185 (Dec. 2, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

John F. Schmelzer, 51 IBLA 188 (Dec. 2, 1980)

MINING CLAIMS--ContinuedABANDONMENT--Continued

Pursuant to 43 CFR 3833.1-1, an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 Oct. 20, 1976), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Gordon L. Cogger, 51 IBLA 191 (Dec. 5, 1980)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper ELM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim, or the claim must be presumed abandoned and void.

Santa Monica Hospital Medical Center Foundation, 51 IBLA 194 (Dec. 5, 1980)

Where a person locates mining claims on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLEMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site by the owner.

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 22, 1979, and the check submitted was returned by the bank as uncollectible, the mining claims located prior to Oct. 21, 1976, are deemed abandoned and void.

John J. Dunsmore et al., 51 IBLA 297 (Dec. 17, 1980)

ASSESSMENT WORK

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which the claim was recorded in the BLM office, the claim is properly deemed conclusively to have been abandoned.

Willene Minnier, 45 IBLA 1 (Jan. 8, 1980)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (2) (1976), if an unpatented mining claim located before Oct. 21, 1976, is not supported annually on or before Dec. 31 of the calendar year following the calendar year he recorded the claim in the BLM office by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intention to abandon

MINING CLAIMS--ContinuedASSESSMENT WORK--Continued

and that the failure to file the required statements with BLM was an oversight.

Jerry Cupper, 45 IBLA 215 (Jan. 30, 1980)

Under 43 CFR 3833.2-1(b) (1978), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, prior to Dec. 31 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

Robert W. Hansen, Federal Bentonite Co., 46 IBLA 93 (Feb. 28, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the date of location or the claim will be conclusively deemed to have been abandoned.

Betty and Clarence L. Guffey, 47 IBLA 175 (May 7, 1980)

Where the owner of an unpatented mining claim located before Oct. 21, 1976, files a copy of the original notice of location in the calendar year 1978, he is required by 43 CFR 3833.2-1(a) to file proof of assessment work for the assessment year ending on Aug. 31, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

A mining claimant's failure to file timely evidence of annual assessment work is not excused by alleged tardiness of the State recorder's office in recording this information and returning a record copy to claimant, as a claimant is permitted under 43 CFR 3833.2-2(a) to satisfy the Federal filing requirements by submitting a duplicate of the assessment notice, even though it has not yet been filed for record with the State.

Harry J. Phillips, 47 IBLA 252 (May 13, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the date of location or the claim will be deemed conclusively to have been abandoned.

Where an appellant asserts on appeal that proof of labor was mailed timely to the Bureau of Land Management, but there exists no record of their receipt, the documents cannot be considered as filed.

Gary L. Barton, J. Marinelli, R. Nixon, 47 IBLA 386 (May 21, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location and related material for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. File means being received and date stamped by the proper BLM office. Failure to

MINING CLAIMS--ContinuedASSESSMENT WORK--Continued

so file is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Robert Willing et al., 48 IBLA 39 (May 29, 1980)

Where the owner of an unpatented mining claim located prior to, but recorded with ELM after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Alice F. Deetz, 48 IBLA 59 (May 29, 1980)

Under 43 CFR 3833.2-1(a), the owner of a mining claim located on Federal lands on or before Oct. 21, 1976, must file with ELM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file constitutes abandonment of the claim and renders the claim void.

Johnnie Finnegan, Don E. Gordon, Carl Holder, 48 IBLA 79 (May 29, 1980)

Where the owner of an unpatented mining claim, located by a predecessor in 1977, fails to file an affidavit of assessment work as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(c), on or before Dec. 30 of the calendar year following the calendar year in which the claim was located, the claim is properly deemed to have been abandoned.

White Star Foundation, Inc., 48 IBLA 96 (May 29, 1980)

Where the owners of unpatented mining claims located before Oct. 21, 1976, fail to file copies of the original notices of location with the proper ELM office on or before Oct. 22, 1979, their claims are properly held to be abandoned and void.

Jean C. Leffer et al., 48 IBLA 103 (May 29, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold on or before Oct. 22, 1979, his claim is deemed conclusively to be abandoned and to be null and void.

Kenneth K. Farker, 48 IBLA 129 (May 30, 1980)

Century XXI Mining, Inc., 49 IBLA 166 (July 30, 1980)

Under 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper ELM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

Ronald Foraker, 48 IBLA 132 (May 30, 1980)

Anna Schalkewicz, 48 IBLA 134 (May 30, 1980)

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MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Zoes Associates, 50 IBLA 164 (Sept. 30, 1980)

A claimant who has located a mining claim in April 1975 and thereafter records his notice of location simultaneously with his filing of evidence of assessment work in May 1978 has satisfied the requirements of 43 CFR 3833.2-1(a) by filing evidence of assessment work on or before Dec. 30, 1979.

Robert W. Perkin, 48 IBLA 209 (June 16, 1980)

Under 43 CFR 3833.2-1(a), the owner of a mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. Failure to so file constitutes abandonment of the claim.

A. J. Grady, 48 IBLA 218 (June 16, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where a mining claim is located on Aug. 20, 1970, and recorded with BLM on Nov. 14, 1978, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

A. W. Josue, 48 IBLA 225 (June 16, 1980)

Where the Government contests the validity of a mining claim for nonperformance of annual assessment work, there is nothing inherent or implied in that action which requires a conclusion that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the Government that "property rights in the claim have been established by the making of a valid location."

Failure to maintain a claim by doing assessment work each year may constitute evidence of abandonment. Independently, a failure to substantially comply with the requirement that annual assessment work be performed, 30 U.S.C. § 28 (1976), requires a finding that the claim has not been "maintained" within the meaning of sec. 37 of the Mineral Leasing Act, 30 U.S.C. § 193 (1976), and may result in a forfeiture of the claim. Hickel v. The Oil Shale Corp., 400 U.S. 48 (1970).

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Alderselle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed conclusively to have been abandoned.

Margaret J. Wilson, 49 IBLA 228 (Aug. 12, 1980)

-- Continued

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

James V. Brady, 51 IELA 361 (Dec. 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, 3833.2-1, and 3833.4, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location and a copy of the recorded affidavit of assessment work or notice of intention to hold the claim, with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

John Lincoln, Jr., 49 IBLA 335 (Aug. 25, 1980)

In order to obtain a temporary deferment, a claimant must file with the authorized officer of the proper office a petition in duplicate requesting such deferment. The applicant must attach to one copy thereof a copy of the notice to the public required by the Act which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded.

A petition for deferment of annual assessment work is properly denied where a claimant's mining claims and millsites have been declared null and void by the Department.

Andrew L. Freese, 50 IBLA 26 (Sept. 9, 1980)

87 I.D. 395

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording with BLM of the copy of the notice or certificate of location, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Milburn Downey, Eugene A. Cunningham, 50 IELA 212 (Sept. 30, 1980)

Where the owners of an unpatented mining claim located prior to Oct. 21, 1976, fail to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, having filed a copy of the notice of location with BLM during calendar year 1978, the claim is properly deemed to be abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

Where appellants assert on appeal that evidence of assessment work was timely mailed to BLM, but there exists no record of its receipt the documents cannot be considered as filed.

Donald P. Vesely et al., 50 IBLA 277 (Oct. 6, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory

MINING CLAIMS--ContinuedASSESSMENT WORK--Continued

and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner.

Cleo May Fresh, Marjorie P. Deterts, 50 IBLA 363 (Oct. 16, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, was required to file with BLM evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

Peter and Rinda Hasson, 51 IBLA 17 (Oct. 28, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void.

Pearl Kelly, 51 IBLA 185 (Dec. 2, 1980)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim, or the claim must be presumed abandoned and void.

Santa Monica Hospital Medical Center Foundation, 51 IBLA 194 (Dec. 5, 1980)

COMMON VARIETIES OF MINERALSGenerally

In order to establish that a type of stone material is not a common variety under the Act of July 23, 1955, a mining claimant must demonstrate that: (1) the mineral deposit has a unique property, and (2) the unique property gives the deposit a distinct and special value. Where evidence does not establish that slate in a particular deposit has a unique property which imparts a distinct and special value, distinguishable from other slate the deposit is a common variety of stone within the meaning of the Act of July 23, 1955.

Without evidence that quartz has a property giving it a special and distinct value, it is a common variety no longer locatable under the mining laws. The test of "uncommonness" is not met by speculation that attractive bits of quartz could be sold to tourists and rockhounds.

United States v. Joseph R. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

Material which is principally valuable for use as fill, sub-base, ballast, riprap, or barrow, for which ordinary earth or rock may be used, is not locatable

MINING CLAIMS--ContinuedCOMMON VARIETIES OF MINERALS--ContinuedGenerally--Continued

under the mining laws and was not locatable prior to July 23, 1955.

United States v. W. G. Nickol, Eva Rose Nickol, 47 IBLA 183 (May 7, 1980)

Without evidence that limestone has a property giving it a special and distinct value, it is a common variety no longer locatable under the United States mining laws. The test of "uncommonness" is not met by speculation that the mineral material might be extracted in blocks of sufficient size as to permit slabs suitable for making table tops or other ornamental use.

United States v. Joseph J. Segna et al., 49 IBLA 73 (July 22, 1980)

Sec. 3 of the Surface Resources Act of July 23, 1955, 69 Stat. 367, 368, 30 U.S.C. § 611 (1976), declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.L. 386

CONTESTS

Where a mining claim contestee fails to appear at a contest hearing and merely sends a message stating that he will not appear, without stating the reasons for his absence, a subsequent motion to reschedule the hearing and reopen the record is properly denied, as the regulations provide that a postponement may be granted only pursuant to a request made no later than the hearing date and stating in detail the reasons why a postponement is necessary.

The asserted inability of a contestee to drive an automobile due to his taking medication is not an extreme emergency which justifies beyond question the granting of a postponement of the hearing where it is not impossible to get to a hearing site by public transportation. Nor is restricted mobility due to arthritis justification for a postponement where the record shows that it is an ongoing condition which could have been anticipated, and that transportation to the hearing site could have been arranged by exercise of proper diligence.

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made. The Government has established a prima facie case when a mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery.

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record as completed at the hearing, despite the absence of evidence in support of the party's case.

New evidence offered on appeal after an initial decision is rendered by an Administrative Law Judge may

MINING CLAIMS--Continued

CONTESTS--Continued

not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Richard H. Franklin, 45 IBLA 54 (Jan. 14, 1980)

When land is withdrawn from all forms of entry, location, and exploration subsequent to location of a mining claim, the validity of such claim cannot be recognized unless (1) it was perfected by a discovery at the time of withdrawal, and (2) it has been continuously supported by the same discovery to the present; that is, at the time of the hearing.

A decision in 1959 withdrawing charges of lack of discovery is not res judicata as to subsequent inquiry. The earlier decision merely established that claimants' possessory interest in claims had not been extinguished by Act of May 27, 1955, 69 Stat. 67, withdrawing lands from all forms of mining activity. Unless and until patent issues, title to the claims in controversy remains in the United States, and it may inquire into the extent and validity of rights claimed against it.

When the Government contests the validity of a mining claim, it has only the burden of establishing a prima facie case; the burden then shifts to the contestee, who is proponent of a claim or right against the United States, to adduce evidence which by a preponderance affirmatively demonstrates the validity of the claim and thus that the charges are untrue.

Where an alleged point of discovery is inaccessible by reason of caving, responsibility for restoring accessibility for purpose of mineral examination lies with contestees. In no case will the Government's mineral examiner be required to perform discovery work for the claimant, to explore beyond the claimant's exposed workings, or to rehabilitate discovery points for the claimant.

Where mineral reports submitted in connection with a previous contest recited only that a valuable mineral had been discovered, but failed to include a mineral examiner's assessment of the quantity and quality of the valuable mineral, marketability, or costs of extraction and transportation, and where the uncontradicted opinion of the Government's witness was that the sampling method was improper, the Administrative Law Judge was correct in according little weight to the reports.

United States v. Richard G. Clemans et al., 45 IBLA 64 (Jan. 17, 1980)

A Forest Service special use permit issued to a state agency does not constitute a withdrawal of the land involved from appropriation under the mining law, and a contest will not lie against a subsequently located mining claim on a charge that a portion of the claim is void to the extent that it includes land embraced by the permit.

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to location, the claimant, as proponent of the rule, has the ultimate burden of proof as to validity of the claim. The Government, however, must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered. If the Government fails to make a sufficient prima facie case against a mining claim, the

MINING CLAIMS--Continued

CONTESTS--Continued

claimant may move to have the contest dismissed and rest his case. However, when the claimant goes forward with his evidence, the Administrative Law Judge must consider the evidence presented and weigh it in accordance with its probative value. In choosing to rebut the case, the claimant bears the burden of doing so by a preponderance of the evidence and bears the risk of nonpersuasion if he fails.

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

United States v. Clare Williamson and Lapine Furice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.L. 34

Where, in the hearing of a mining claim contest in which the presence of a mineral deposit within the limits of a claim is at issue and the claim is accessible, it is established that the Government mineral examiner made no professional examination of certain of the contested claims, the testimony of the Government mineral examiner, without more, is insufficient to establish a prima facie case of invalidity.

The mere fact that mining claims are allegedly located in the same kind of area with the same topography as other claims where there has been no discovery does not, without more, support the conclusion that there is no discovery on the former claims. Geologic inference drawn from such alleged similarities is insufficient by itself to show that no discovery has been made on the claims.

Uncontradicted evidence of nonproduction of a mining claim, which has continued over a period of years, is sufficient, without more, to establish a prima facie case of invalidity of the mining claim.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

Where a Government contest complaint against a mining claim contains charges which, if proved, would render the claim invalid, and the contestee fails to file an answer to the complaint in accordance with Departmental regulations, the allegations of the complaint will be taken as admitted by the contestee, and the claim is properly declared null and void. The Secretary is without authority to waive the regulations to permit the late filing of an answer.

United States v. Dan Seelinger, 46 IBLA 76 (Feb. 22, 1980)

The BLM may not summarily reject a mineral patent application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

Big Horn Limestone Co., 46 IBLA 98 (Feb. 28, 1980)

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

United States v. Ludwig G. Rosenkranz, 46 IBLA 109 (Feb. 29, 1980)

MINING CLAIMS--ContinuedCONTESTS--Continued

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Joseph R. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

United States v. James S. Sette, 46 IBLA 335 (Apr. 4, 1980)

When the Government contests mining claims on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case. When it has done so, the burden shifts to the claimants to show, by a preponderance of the evidence, that a discovery of a valuable mineral deposit has been made and still exists within the limits of each claim under contest.

The decision of an Administrative Law Judge will not be disturbed on appeal where the preponderance of the evidence supports the result reached, and the appellants have not pointed out any error in the decision.

United States v. Roy Peterson & Charles R. Sweet, 47 IBLA 92 (Apr. 23, 1980)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings.

United States v. Robert Chambers, 47 IBLA 102 (Apr. 23, 1980)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing.

United States v. William R. Soren, 47 IBLA 226 (May 13, 1980)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

MINING CLAIMS--ContinuedCONTESTS--Continued

The assertion that annual assessment work has not been performed is the assertion of a negative fact. If an examination of the mining claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence to this effect would be sufficient to establish a prima facie case. It would then devolve upon the claimant to show by a preponderance of the countervailing evidence that he has substantially complied with the statute.

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

Where the Government contests the validity of a mining claim for nonperformance of annual assessment work, there is nothing inherent or implied in that action which requires a conclusion that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the Government that "property rights in the claim have been established by the making of a valid location."

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aidselle Prawn et al., 48 IBLA 267 (June 30, 1980) 87 I.L. 248

When the United States contests a mining claim, it has assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint. The burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case. The United States has established a prima facie case when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit.

It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit.

United States v. Ubehebe Lead Mines Co., 49 IEIA 1 (July 15, 1980)

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Joseph J. Segna et al., 49 IEIA 73 (July 22, 1980)

Where facts and law are properly set forth and applied in Administrative Law Judge decision holding lode mining claims void for lack of discovery, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

United States v. Keith Lindsey, 49 IEIA 344 (Aug. 25, 1980)

MINING CLAIMS--ContinuedCONTESTS--Continued

When the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established.

United States v. Charles M. Ledford et al., 49 IBLA 353 (Aug. 29, 1980)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where there is not sufficient reason shown to disturb an Administrative Law Judge's finding that the prudent man-marketability test was met as of July 23, 1955, and continuously thereafter by mining claimants who extracted and profitably sold sand and gravel from the claims prior to that date and continuously thereafter, the decision will be sustained on appeal.

The Board of Land Appeals will not order a further hearing in a mining claim contest case where a patent application has been filed merely because the evidentiary record is inadequate to invalidate the claims for lack of a discovery of a valuable mineral deposit, if the claimant is found to have met the discovery test.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.D. 386

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The fact that such contest challenges the validity of certain mining claims and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings. It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit, and his unsupported argument that the samples taken by the examiner are not representative will be rejected.

United States v. R. H. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

MINING CLAIMS--ContinuedCONTESTS--Continued

The procedure followed by the Department of the Interior in the initiation of mining contest cases is in compliance with the due process clause of the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 551 (1976).

United States v. Mary E. Gray, 50 IBLA 209 (Sept. 30, 1980)

When a Bureau of Land Management decision declares mining claims abandoned and void for failure to timely file a copy of evidence of assessment work or notice of intention to hold as required by 43 U.S.C. § 1744 (1976) (FLFMA) and 43 CFR 3833.2-1(a), and on appeal an assertion is made that the material was properly submitted but under a different spelling of the name of the claims, the decision may be set aside and the case awarded for review.

Rudolph S. Polnik, 50 IBLA 225 (Sept. 30, 1980)

When the Government contests mining claims on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case. When it has done so, the burden shifts to the claimants to show, by a preponderance of the evidence, that a discovery of a valuable mineral deposit has been made and still exists within the limits of each claim under contest.

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

A second hearing of a Government mining contest will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where he was actually present at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result. A petition to reopen a hearing of a Government mining contest will be denied when the contestee offers no valid justification for the neglect to offer evidence which was or could have been available at the original hearing. A further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

When the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and is present within the limits of the claim.

Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's discovery points. It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit, and his unsupported argument that the samples taken by the examiner are not representative will be rejected.

United States v. Ernest L. and Evelyn E. Prunskill, 51 IBLA 199 (Dec. 5, 1980)

MINING CLAIMS--ContinuedCONTESTS--Continued

When the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and is present within the limits of the claim.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established, and if not rebutted, the mining claim is properly declared invalid.

United States v. Paul Watkins, 51 IBLA 255 (Dec. 15, 1980)

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining examiner testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable deposit.

United States v. W. S. Wood et al., 51 IBLA 301 (Dec. 18, 1980) 87 I.L. 628

DETERMINATION OF VALIDITY

When land is withdrawn from all forms of entry, location, and exploration subsequent to location of a mining claim, the validity of such claim cannot be recognized unless (1) it was perfected by a discovery at the time of withdrawal, and (2) it has been continuously supported by the same discovery to the present; that is, at the time of the hearing.

A decision in 1959 withdrawing charges of lack of discovery is not res judicata as to subsequent inquiry. The earlier decision merely established that claimants' possessory interest in claims had not been extinguished by Act of May 27, 1955, 69 Stat. 67, withdrawing lands from all forms of mining activity. Unless and until patent issues, title to the claims in controversy remains in the United States, and it may inquire into the extent and validity of rights claimed against it.

Where an alleged point of discovery is inaccessible by reason of caving, responsibility for restoring accessibility for purpose of mineral examination lies with contestees. In no case will the Government's mineral examiner be required to perform discovery work for the claimant, to explore beyond the claimant's exposed workings, or to rehabilitate discovery points for the claimant.

United States v. Richard G. Clemans et al., 45 IBLA 64 (Jan. 17, 1980)

Mining claims are properly declared null and void ab initio when they are located during a period when the lands are withdrawn from entry under the mining laws. However, under 30 U.S.C. § 38 (1976), if a person or predecessors-in-interest have held and worked the claims for a period of time equal to that prescribed by the state statute of limitations for adverse possession of mining claims, during which period the land was open to mineral location, that person is deemed to have made proper locations. Whether the locations are valid depends on whether discoveries have

MINING CLAIMS--ContinuedDETERMINATION OF VALIDITY--Continued

been made on each claim within the meaning of the mining laws.

Dolores Olsen and Wesley E. Mace, et al., 45 IBLA 232 (Feb. 4, 1980)

When land is withdrawn from location under the mining laws subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal to be valid.

If a mining claimant locates a group of claims, he must establish discovery for each claim that he seeks to validate.

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to location, the claimant, as proponent of the rule, has the ultimate burden of proof as to validity of the claim. The Government, however, must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the lands embraced by a mining claim are not mineral in character can raise two discrete issues. First, it can challenge the validity of the entire claim. Alternatively, it can be applied to placer claims which are supported by a discovery, with the effect that the claimant must show that each 10 acres of the claim are mineral in character.

The charge of invalidity due to the presence of excess reserves admits that the mineral, qua mineral, exists within additional claims, but raises the contention that because of the quantity of mineral present in unchallenged claims owned by the mineral claimant, the mineral in the challenged claims would have no market and thus is essentially valueless.

A valid mining claim for lands previously withdrawn from location must be supported by discovery as of the date of withdrawal and a showing that marketability has continued since discovery and the minerals can presently be profitably extracted.

United States v. Clare Williamson and Lapine Furrice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.L. 34

The ELM may not summarily reject a mineral patent application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

Big Horn Limestone Co., 46 IBLA 98 (Feb. 28, 1980)

If a mining claim is located after Oct. 21, 1976, and the locator fails to record the claims with the proper State Office of the Bureau of Land Management within 90 days afterward, the Department must conclusively deem the claims abandoned and declare them null and void. The fact that the claimant was not notified of the rejection of his filings soon enough to enable him to relocate the claims prior to a time when any intervening claims of right may have arisen does not permit the Department to withhold the consequences of invalidity mandated by the statute.

George L. Ruffy, 46 IBLA 127 (Feb. 29, 1980)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Material which is principally valuable for use as fill, sub-base, ballast, riprap or barrow, for which ordinary earth or rock may be used, is not locatable under the mining laws and was not locatable prior to July 23, 1955.

United States v. Joseph R. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim, located after Oct. 21, 1976, is properly deemed abandoned and void.

A question as to the date of location of a mining claim is to be resolved according to state law, pursuant to 43 CFR 3833.0-5(h).

B. J. Holmes, 46 IBLA 316 (Apr. 4, 1980)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Jacqueline E. Nelson, 47 IBLA 12 (Apr. 10, 1980)

A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This "prudent man" test has been refined and complemented by the "marketability" test requiring a showing that the mineral in question can be presently extracted, removed, and marketed at a profit.

United States v. W. G. Nickol, Eva Rose Nickol, 47 IBLA 183 (May 7, 1980)

Where, in a hearing undertaken pursuant to a contest complaint alleging the invalidity of various mining claims, the contestee affirmatively states that there is no discovery on certain of the claims, the contestee will not be heard on appeal to assert that there was a discovery on those claims.

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

Where a claim's validity is dependent upon the extent of a mineralized deposit, and where no evidence has been submitted relating to the geologic factors upon which expert opinion evidence was premised, it is proper to dismiss the Government's contest, without prejudice.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

Where the Government contests the validity of a mining claim for nonperformance of annual assessment work, there is nothing inherent or implied in that action which requires a conclusion that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the Government that "property rights in the claim have been established by the making of a valid location."

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aidabelle Frown et al., 48 IBLA 267 (June 30, 1980) 87 I.L. 246

In order to establish the existence of a discovery on a lode mining claim, there must be found within the limits of the claim a vein or lode of rock in place, bearing mineral of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence in a mining claim contest showing only that further exploration might be warranted is insufficient to establish the discovery of a valuable mineral deposit.

Exhaustion of an ore deposit or a change in economic conditions which makes mining unprofitable may cause the loss of a previous discovery on a mining claim.

United States v. Utehebe Lead Mines Co., 49 IBLA 1 (July 15, 1980)

The Board adopts a decision of an Administrative Law Judge holding mining claims null and void for lack of discovery of a valuable deposit of an uncommon variety of limestone, where nondiscovery is established by the totality of the evidence.

United States v. Joseph J. Segna et al., 49 IBLA 73 (July 22, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner.

George W. Ccle, 49 IBLA 128 (July 28, 1980)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Where a mining claim located on land withdrawn at the time of location is declared void ab initio, such a location, and the decision declaring such a location void, do not affect the status of any location of the same land made prior to the withdrawal; nor can such a

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

location, made by a party with an interest in the prior location, reestablish or protect rights to the prior claim.

Jack C. Franks, 49 IBLA 162 (July 30, 1980)

The Board adopts a decision of an Administrative Law Judge holding a placer mining claim null and void for lack of discovery of a valuable mineral deposit within the limits of the claim, where nondiscovery clearly is established by the evidence of record.

United States v. Charles M. Ledford et al., 49 IBLA 353 (Aug. 29, 1980)

Sec. 3 of the Surface Resources Act of July 23, 1955, 69 Stat. 367, 368, 30 U.S.C. § 611 (1976), declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

The prudent man test of discovery has been satisfied where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. The marketability refinement of the prudent man test of discovery requires that the mineral locator must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the mineral deposit is of such value that it can be mined, removed and disposed of at a profit.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.D. 386

Mineralization which only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit. Where it is shown that a contestee does not have a discovery at the time of the hearing, it is not necessary for contestant to establish invalidity by showing a lack of discovery at the date of an earlier withdrawal from mineral location.

United States v. Lee Western, Inc., Garth Black, 50 IBLA 95 (Sept. 17, 1980)

In a Government contest of a mining claim for which an application for patent has been filed, the Government assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that the claims are valid. A claimant establishes the validity of his claims by a preponderance of the evidence where the claimant's witness, testifying to the validity of the contested claims, is found to be more credible.

United States v. Cornelius E. Mannix, 50 IBLA 110 (Sept. 24, 1980)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The fact that such contest challenges the validity of certain mining claims and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. R. H. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

Mining claims located on land at a time the land is withdrawn from appropriation under the United States mining laws properly are declared null and void ab initio.

Marvin Mack, Betty K. Mack, 51 IBLA 30 (Oct. 30, 1980)

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

Under Andrus v. Shell Oil Co., ___ U.S. ___, 64 L.Ed.2d 593 (1980), 48 U.S.L.W. 4603 (June 2, 1980), oil shale is a prospectively valuable mineral and therefore present marketability need not be shown to demonstrate discovery.

To demonstrate a sufficient discovery of oil shale under Freeman v. Summers, 52 L.D. 201 (1927), a mining claimant must show that mineral was disclosed on or before Feb. 25, 1920, in such situation and such formation that he can follow the deposit to depth with reasonable assurance that paying minerals will be found. An isolated bit of mineral, not connected with or leading to substantial prospective values, is not a sufficient discovery.

Under Freeman v. Summers, an exposure of the Parachute Creek member, even though of limited extent, can be geologically inferred to embrace sufficient quantity of high grade oil shale so as to constitute a valuable mineral deposit.

United States v. Cameron Catlin Fohme et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al. (SURF.), 51 IBLA 97 (Nov. 5, 1980) 87 I.D. 535

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining examiner testifies that he has

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

examined the claim and found the mineral values insufficient to support the discovery of a valuable deposit.

United States v. W. S. Wood et al., 51 IBLA 301
(Dec. 18, 1980) 87 I.E. 628

DISCOVERY

Generally

Where previous BLM mineral reports recited only that a valuable mineral had been discovered, but failed to include a mineral examiner's assessment of the quantity and quality of the mineral, marketability, or costs of extraction and transportation, the decision below holding the claims invalid because of lack of discovery was correct. "Valuable mineral" is not synonymous with "valuable mineral deposit." A valuable mineral deposit is an occurrence of mineralization of such quantity and quality that a person of ordinary prudence would be justified in the expenditure of time and money in the development of a mine and the extraction of the mineral.

United States v. Richard G. Clemans et al., 45 IBLA 64
(Jan. 17, 1980)

A discovery of valuable minerals under Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

When land is withdrawn from location under the mining laws subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal to be valid.

If a mining claimant locates a group of claims, he must establish discovery for each claim that he seeks to validate.

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the lands embraced by a mining claim are not mineral in character can raise two discrete issues. First, it can challenge the validity of the entire claim. Alternatively, it can be applied to placer claims which are supported by a discovery, with the effect that the claimant must show that each 10 acres of the claim are mineral in character.

United States v. Clare Williamson and Lapine Punice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.E. 34

Where, in the hearing of a mining claim contest in which the presence of a mineral deposit within the limits of a claim is at issue and the claim is accessible, it is established that the Government mineral examiner made no professional examination of certain of the contested claims, the testimony of the Government mineral examiner, without more, is insufficient to establish a prima facie case of invalidity.

Uncontradicted evidence of nonproduction of a mining claim, which has continued over a period of years, is sufficient, without more, to establish a prima facie case of invalidity of the mining claim.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

A discovery of valuable mineral exists where the claim contains mineralization of sufficient quality and quantity to justify further expenditure of labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

Minute amounts of mineralization may justify further exploration without establishing discovery.

Discovery of gold sufficient to validate a mining claim must be made on the claim itself, despite gold discovery on land nearby which might induce a reasonable prospector to continue searching for a valuable mineral deposit on the claim.

United States v. Ludwig G. Rosenkranz, 46 IBLA 109
(Feb. 29, 1980)

A discovery of a valuable mineral deposit has been made where locatable minerals have been found within the limits of a claim and the evidence is such that a person of ordinary prudence would be justified in the further expenditure of his labor and means in a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

The sale of decorative building stone from the surface of a lode mining claim cannot support a claimant's contention that a valuable mineral discovery has been made on such lode claim, decorative stone being locatable only under the provisions of the placer mining laws, 30 U.S.C. § 161 (1976), and only where such stone is shown to be an "uncommon variety" within the meaning of 30 U.S.C. § 611 (1976). A lode mining claim will not support a finding that decorating stone has been discovered, since that deposit was locatable only under the placer mining laws.

The purpose of 30 U.S.C. § 38 (1976) whereby a person or association may establish a right to patent lands which said person or association has held and worked for a period equal to the statute of limitations is to obviate proving formal compliance with requirements for locating a claim, but it does not dispense with proof of discovery.

United States v. Joseph R. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGenerally--Continued

sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

It is a cardinal principle of mining law that mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineral might be found to justify mining development does not constitute a valuable mineral deposit.

Discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Discovery of gold and other minerals sufficient to support a mining claim must be made on the claim itself, notwithstanding discovery of gold on nearby land which might persuade a reasonable prospector to continue his search for a valuable mineral deposit on the claim.

United States v. James S. Sette, 46 IBLA 335 (Apr. 4, 1980)

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit. A valuable mineral deposit has not been found simply because the facts might warrant further search for such a deposit.

When the Government contests mining claims on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case. When it has done so, the burden shifts to the claimants to show, by a preponderance of the evidence, that a discovery of a valuable mineral deposit has been made and still exists within the limits of each claim under contest.

United States v. Roy Peterson & Charles R. Sweet, 47 IBLA 92 (Apr. 23, 1980)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings.

To constitute a discovery on a lode mining claim there must be physically exposed within the limits of the claim a lode or vein bearing mineral of such quality and in such quantity as to warrant a man of ordinary prudence in the expenditure of his labor and means, with a reasonable prospect of success, in attempting to develop a valuable mine; it is not enough to show that the exposed mineralization is sufficient to warrant holding a claim with a reasonable hope that at some time in the future the land embraced therein may become valuable for mining.

While geologic inference based upon knowledge of the degree of mineralization prevalent within the surrounding area cannot substitute for the actual exposure of a vein or lode within a claim, it may be relied

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGenerally--Continued

upon as an aid to calculate the extent and potential value of the mineral deposit, once a vein or lode bearing minable material has been exposed. To establish the existence of a valuable mineral deposit on a lode claim, there must be evidence of continuous mineralization along the course of the vein or lode; the mere showing of disconnected pods of mineral concentration, even of high values, does not satisfy the test.

United States v. Robert Chambers, 47 IBLA 102 (Apr. 23, 1980)

Material which is principally valuable for use as fill, sub-base, ballast, riprap, or borrow, for which ordinary earth or rock may be used, is not locatable under the mining laws and was not locatable prior to July 23, 1955.

United States v. W. G. Nickol, Eva Rouse Nickol, 47 IBLA 183 (May 7, 1980)

Where, in a hearing undertaken pursuant to a contest complaint alleging the invalidity of various mining claims, the contestee affirmatively states that there is no discovery on certain of the claims, the contestee will not be heard on appeal to assert that there was a discovery on those claims.

Where a claim's validity is dependent upon the extent of a mineralized deposit, and where no evidence has been submitted relating to the geologic factors upon which expert opinion evidence was premised, it is proper to dismiss the Government's contest, without prejudice.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

In order to establish the existence of a discovery on a lode mining claim, there must be found within the limits of the claim a vein or lode of rock in place, bearing mineral of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence in a mining claim contest showing only that further exploration might be warranted is insufficient to establish the discovery of a valuable mineral deposit.

Exhaustion of an ore deposit or a change in economic conditions which makes mining unprofitable may cause the loss of a previous discovery on a mining claim.

When land is withdrawn from the operation of the mining laws subject to valid existing rights, as was the Death Valley National Monument on Sept. 28, 1976, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Ubehebe Lead Mines Co., 49 IBLA 1 (July 15, 1980)

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGenerally--Continued

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Joseph J. Segna et al., 49 IBLA 73 (July 22, 1980)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Charles M. Ledford et al., 49 IBLA 353 (Aug. 29, 1980)

United States v. Ernest L. and Evelyn B. Brunskill, 51 IBLA 199 (Dec. 5, 1980)

United States v. Paul Watkins, 51 IBLA 255 (Dec. 15, 1980)

The prudent man test of discovery has been satisfied where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. The marketability refinement of the prudent man test of discovery requires that the mineral locator must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the mineral deposit is of such value that it can be mined, removed and disposed of at a profit.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.L. 386

Mineralization which only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit. Where it is shown that a contestee does not have a discovery at the time of the hearing, it is not necessary for contestant to establish invalidity by showing a lack of discovery at the date of an earlier withdrawal from mineral location.

United States v. Lee Western, Inc., Garth Black, 50 IBLA 95 (Sept. 17, 1980)

In determining whether a claimant has made a discovery, the present costs of mining, removing, and marketing the minerals involved are properly considered.

United States v. Cornelius E. Mannix, 50 IBLA 110 (Sept. 24, 1980)

Discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Discovery of gold and other minerals sufficient to support a mining claim

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGenerally--Continued

must be made on the claim itself, notwithstanding discovery of gold on nearby land which might persuade a reasonable prospector to continue his search for a valuable mineral deposit on the claim.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. R. H. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

Discovery has been achieved when one finds a mineral deposit of such quantity and quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

When the Government contests mining claims on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case. When it has done so, the burden shifts to the claimants to show, by a preponderance of the evidence, that a discovery of a valuable mineral deposit has been made and still exists within the limits of each claim under contest.

The prudent man test is an objective not a subjective standard. The value that an ordinary person would expect to receive for his labor must be taken into account, while the willingness of a claimant to persist on unusually low remuneration must be disregarded.

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization may be found to justify mining or development does not constitute a valuable mineral deposit. A valuable mineral deposit has not been found simply because the facts might warrant further search for such a deposit.

In evaluating a mineral deposit geologic inference may be used where the deposit has been adequately physically exposed. However, it cannot be used as a substitute for evidence sufficiently showing the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

To demonstrate a sufficient discovery of oil shale under Freeman v. Summers, 52 L.D. 201 (1927), a mining claimant must show that mineral was disclosed on or before Feb. 25, 1920, in such situation and such formation that he can follow the deposit to depth with reasonable assurance that paying minerals will be found. An isolated bit of mineral, not connected with or leading to substantial prospective values, is not a sufficient discovery.

United States v. Cameron Catlin Fohme et al., United States v. Exxon Corp. et al., United States v. Adelaide Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980) 87 I.L. 535

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGenerally--Continued

The discovery of a "valuable mineral deposit" has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence which will not justify development of a claim but may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of a withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location.

United States v. W. S. Wood et al., 51 IBLA 301 (Dec. 18, 1980) 87 I.D. 628

Geologic Inference

The mere fact that mining claims are allegedly located in the same kind of area with the same topography as other claims where there has been no discovery does not, without more, support the conclusion that there is no discovery on the former claims. Geologic inference drawn from such alleged similarities is insufficient by itself to show that no discovery has been made on the claims.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

While geologic inference based upon knowledge of the degree of mineralization prevalent within the surrounding area cannot substitute for the actual exposure of a vein or lode within a claim, it may be relied upon as an aid to calculate the extent and potential value of the mineral deposit, once a vein or lode bearing minable material has been exposed. To establish the existence of a valuable mineral deposit on a lode claim, there must be evidence of continuous mineralization along the course of the vein or lode; the mere showing of disconnected pods of mineral concentration, even of high values, does not satisfy the test.

United States v. Robert Chambers, 47 IBLA 102 (Apr. 23, 1980)

In evaluating a mineral deposit geologic inference may be used where the deposit has been adequately physically exposed. However, it cannot be used as a substitute for evidence sufficiently showing the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

MINING CLAIMS--ContinuedDISCOVERY--ContinuedGeologic Inference--Continued

Under Freeman v. Summers, 52 I.D. 201 (1927), an exposure of the Parachute Creek member, even though of limited extent, can be geologically inferred to embrace sufficient quantity of high grade oil shale so as to constitute a valuable mineral deposit.

United States v. Cameron Catlin Fohme et al., United States v. Exxon Corp. et al., United States v. Aidelle Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980) 87 I.D. 535

Marketability

A discovery of valuable minerals under Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

Although a favorable showing of actual sales may demonstrate marketability, lack of sales is not necessarily conclusive on the issue of marketability. Lack of sales may be overcome, after all the evidence is heard, by a preponderance of the evidence showing that a prudent person could have extracted and marketed the mineral profitably.

A valid mining claim for lands previously withdrawn from location must be supported by discovery as of the date of withdrawal and a showing that marketability has continued since discovery and the minerals can presently be profitably extracted.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Material which is principally valuable for use as fill, sub-base, ballast, riprap or barrow, for which ordinary earth or rock may be used, is not locatable under the mining laws and was not locatable prior to July 23, 1955.

United States v. Joseph R. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This "prudent man" test has been refined and complemented by the "marketability" test requiring a showing that the mineral in question can be presently extracted, removed, and marketed at a profit.

United States v. W. G. Nickol, Eva Rose Nickol, 47 IBLA 183 (May 7, 1980)

Sec. 3 of the Surface Resources Act of July 23, 1955, 69 Stat. 367, 368, 30 U.S.C. § 611 (1976), declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

The prudent man test of discovery has been satisfied where minerals have been found in sufficient

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. The marketability refinement of the prudent man test of discovery requires that the mineral locator must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the mineral deposit is of such value that it can be mined, removed and disposed of at a profit.

Where there is not sufficient reason shown to disturb an Administrative Law Judge's finding that the prudent man-marketability test was met as of July 23, 1955, and continuously thereafter by mining claimants who extracted and profitably sold sand and gravel from the claims prior to that date and continuously thereafter, the decision will be sustained on appeal.

The Board of Land Appeals will not order a further hearing in a mining claim contest case where a patent application has been filed merely because the evidentiary record is inadequate to invalidate the claims for lack of a discovery of a valuable mineral deposit, if the claimant is found to have met the discovery test.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.L. 386

The Supreme Court has determined that a finding of present marketability as of Feb. 25, 1920, is not a prerequisite to a determination that oil shale deposits are valuable mineral deposits within the meaning of the general mining laws, and has excepted oil shale claims from the general rules of discovery for mining claims.

Frederick H. Larson v. State of Utah, 50 IEIA 382 (Oct. 22, 1980)

Under Andrus v. Shell Oil Co., ___ U.S. ___, 64 L.Ed.2d 593 (1980), 48 U.S.L.W. 4603 (June 2, 1980), oil shale is a prospectively valuable mineral and therefore present marketability need not be shown to demonstrate discovery.

United States v. Cameron Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980) 87 I.L. 535

EXCESS RESERVES

The charge of invalidity due to the presence of excess reserves admits that the mineral, qua mineral, exists within additional claims, but raises the contention that because of the quantity of mineral present in unchallenged claims owned by the mineral claimant, the mineral in the challenged claims would have no market and thus is essentially valueless.

United States v. Clare Williamson and Larine Furice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.L. 34

HEARINGS

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling

MINING CLAIMS--Continued

HEARINGS--Continued

objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard G. Clemons et al., 45 IEIA 64 (Jan. 17, 1980)

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered. If the Government fails to make a sufficient prima facie case against a mining claim, the claimant may move to have the contest dismissed and rest his case. However, when the claimant goes forward with his evidence, the Administrative Law Judge must consider the evidence presented and weigh it in accordance with its probative value. In choosing to rebut the case, the claimant bears the burden of doing so by a preponderance of the evidence and bears the risk of nonpersuasion if he fails.

United States v. Clare Williamson and Larine Furice Co., 45 IEIA 264 (Feb. 4, 1980) 87 I.L. 34

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if the hearing should be reopened.

United States v. Ludwig G. Rosenkranz, 46 IEIA 109 (Feb. 29, 1980)

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Joseph R. and Aletha Henri, 46 IEIA 221 (Mar. 27, 1980)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Alva F. Rockwell and Alva A. Rockwell, 47 IEIA 272 (May 13, 1980)

Max Weiss, 49 IEIA 332 (Aug. 25, 1980)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

United States v. George C. Hooker et al., 48 IEIA 22 (May 27, 1980)

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of

MINING CLAIMS--ContinuedHEARINGS--Continued

record concerning the status of the land when the claim was located, no hearing is required.

John J. Schnabel, 50 IBLA 201 (Sept. 30, 1980)

The procedure followed by the Department of the Interior in the initiation of mining contest cases is in compliance with the due process clause of the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 551 (1976).

To warrant a further hearing in a mining claim contest, based upon asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Evidence of a past discovery is not sufficient by itself to indicate that a different result might now be obtained.

United States v. Mary E. Gray, 50 IBLA 209 (Sept. 30, 1980)

LANDS SUBJECT TO

A Forest Service special use permit issued to a state agency does not constitute a withdrawal of the land involved from appropriation under the mining law, and a contest will not lie against a subsequently located mining claim on a charge that a portion of the claim is void to the extent that it includes land embraced by the permit.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.L. 34

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Jacqueline E. Nelson, 47 IBLA 12 (Apr. 10, 1980)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Water and Power Resources Service has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Florence Adkisson, 47 IBLA 121 (Apr. 28, 1980)

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio, and an attempted recordation of such mining claims is properly refused by the Bureau of Land Management.

Jonathan Carr, 49 IBLA 17 (July 15, 1980)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Where a mining claim located on land withdrawn at the time of location is declared void ab initio, such a location, and the decision declaring such a location void, do not affect the status of any location of the same land made prior to the withdrawal; nor can such a location, made by a party with an interest in the prior

MINING CLAIMS--ContinuedLANDS SUBJECT TO--Continued

location, reestablish or protect rights to the prior claim.

Jack C. Franks, 49 IBLA 162 (July 30, 1980)

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims, and BLM properly rejects a copy of a notice of location of a lode claim insofar as it covers patented land. However, BLM should not reject the notice insofar as it concerns unpatented lands, provided that the claim conforms to the rules governing lode claims after being amended to exclude the patented areas.

Samuel A. Chesebrough, 49 IBLA 249 (Aug. 18, 1980)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

George H. Fennimore et al., 50 IBLA 280 (Oct. 6, 1980)

The Outer Continental Shelf Lands Act, as amended, 43 U.S.C. §§ 1331-56 (Supp. II 1978), provides the exclusive authority for the development of minerals on the outer continental shelf. Mining claims situated on the outer continental shelf assertedly located pursuant to the placer provisions of the general mining law, 30 U.S.C. §§ 35-36 (1976), must be declared null and void.

Ford MacElvain, 50 IBLA 303 (Oct. 7, 1980)

87 I.L. 478

Mining claims located on lands subject to valid, ongoing, and pre-existing rights-of-way granted to the State of Idaho pursuant to the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), to use the lands for materials for highway construction, are null and void ab initio.

James F. Fercohn, Wayne A. Reddekopp, 50 IBLA 414 (Oct. 24, 1980)

Mining claims located on land at a time the land is withdrawn from appropriation under the United States mining laws properly are declared null and void ab initio.

Marvin Mack, Betty K. Mack, 51 IBLA 30 (Oct. 30, 1980)

Land which has been conveyed to a state without a reservation of minerals to the United States is not available for the location of mining claims, and a mining claim located on such land after it is so patented is null and void ab initio.

Don P. Smith, 51 IBLA 71 (Oct. 31, 1980)

A single discovery of mineral within a placer mining claim does not conclusively establish the mineral character of all the land included in the location. Whether the land embraced in the claim is mineral in character is an issue which remains open to investigation and determination by the Department until patent issues. The contestee must establish that each 10-acre tract within the entire claim is mineral in character,

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

failing in which any nonmineral 10-acre tract is properly excluded from the patent application.

United States v. Cameron Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aida Belle Brown et al. (Supp.), 51 IFLA 97 (Nov. 5, 1980)
87 I.D. 535

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims and BLM properly refuses recordation of such claims.

Silver Spot Metals, Inc., 51 IBLA 212 (Dec. 10, 1980)

LOCATABILITY OF MINERAL

Generally

Material which is principally valuable for use as fill, sub-base, ballast, riprap, or barrow, for which ordinary earth or rock may be used, is not locatable under the mining laws and was not locatable prior to July 23, 1955.

United States v. W. G. Nickol, Eva Rose Nickol, 47 IFLA 183 (May 7, 1980)

Leasable Compounds

A natural brine containing water and ions of sodium, potassium, calcium, magnesium, and chlorine may be considered a valuable deposit of a sodium compound within the meaning of 30 U.S.C. § 262 (1976) if either of two contingencies occur. First, sodium must be present in sufficient quantity as to be commercially valuable. Second, sodium must be essential to the molecular structure of the valuable mineral.

Land is "known to be valuable" for a mineral subject to the Mineral Leasing Act of Feb. 25, 1920, as amended, when "known conditions at the time [of location] were plainly such as to engender the belief that the land contained mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end." United States v. Southern Pacific Co., 251 U.S. 1, 13-14 (1919); Diamond Coal Co. v. United States, 233 U.S. 236, 239-40 (1914). In determining whether mineral deposits are such as to render their extraction profitable and justify expenditures, extrinsic factors, such as the cost of extraction, processing, transportation, and marketing must be considered.

The Administrative Law Judge gave proper weight to Government testimony in dismissing the Government's contest complaint where the evidence supported a finding of the existence of a sodium-calcium-chloride brine, but did not support a finding that such brine was "known to be valuable" for a Leasing Act mineral.

The existence of a "related product" within the meaning of 30 U.S.C. § 262 (1976) presumes the existence of a valuable sodium compound deposit.

United States v. Levon Bardsley (Trustee), Marlene M. Bardsley, Individually and as Administratrix of the Estate of Donald H. Bardsley (Deceased), 45 IBLA 367 (Feb. 7, 1980)

MINING CLAIMS--Continued

LOCATION

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of location." The date of location of a mining claim is determined in accordance with the law of the State where the claim is situated. Under Washington law, it is the date specified on the notice of location filed with the local recorder's office.

The date of location of a mining claim may not be changed by altering this date on the copy of the notice of location filed with BLM so that it reflects a date different than that in the original notice.

F. E. S. Mining Co., 45 IFLA 115 (Jan. 23, 1980)

Mining claims are properly declared null and void ab initio when they are located during a period when the lands are withdrawn from entry under the mining laws. However, under 30 U.S.C. § 38 (1976), if a person or predecessors-in-interest have held and worked the claims for a period of time equal to that prescribed by the state statute of limitations for adverse possession of mining claims, during which period the land was open to mineral location, that person is deemed to have made proper locations. Whether the locations are valid depends on whether discoveries have been made on each claim within the meaning of the mining laws.

Polores Olsen and Wesley E. Mace, et al., 45 IFLA 232 (Feb. 4, 1980)

A Forest Service special use permit issued to a state agency does not constitute a withdrawal of the land involved from appropriation under the mining law, and a contest will not lie against a subsequently located mining claim on a charge that a portion of the claim is void to the extent that it includes land embraced by the permit.

United States v. Clare Williamson and Larine Eunice Co., 45 IFLA 264 (Feb. 4, 1980) 87 I.D. 34

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3642.1-2.

Big Horn Limestone Co., 46 IFLA 98 (Feb. 28, 1980)

The purpose of 30 U.S.C. § 38 (1976) whereby a person or association may establish a right to patent lands which said person or association has held and worked for a period equal to the statute of limitations is to obviate proving formal compliance with requirements for locating a claim, but it does not dispense with proof of discovery.

United States v. Joseph E. and Aletha Henri, 46 IFLA 221 (Mar. 27, 1980)

MINING CLAIMS--ContinuedLOCATION--Continued

The owner of an unpatented mining claim, located after Oct. 21, 1976, must file within 90 days after the date of location, in the proper BLM office, a copy of the certificate of location of the claim.

The failure to file the instruments required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, constitutes an abandonment of the mining claim, and the claim is properly deemed to be void.

Eric Murray, 47 IBLA 112 (Apr. 28, 1980)

The owner of a mining claim located on or before Oct. 21, 1976, had until Oct. 22, 1979, to record a copy of the location notice with Bureau of Land Management and pay the required service fee, and where the fee was not paid 43 CFR 3833.1-2(d) requires that the notice of location be returned as unacceptable.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to timely file an instrument required by 43 CFR 3833.1-2 constitutes an abandonment of the mining claim, and it is deemed to be void.

George B. Flewelling, 48 IBLA 141 (May 30, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b) and 3833.4, the owner of an unpatented mining claim located after Oct. 21, 1976, shall file within 90 days after the date of location in the proper BLM office a copy of the official record of the notice or certificate of location, or the claim must be deemed abandoned and void.

James White, 48 IBLA 346 (July 3, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Armando Majalca, 48 IBLA 351 (July 11, 1980)

Under 43 U.S.C. § 1744 (1976) if the owner of a mining claim located on or before Oct. 21, 1976, does not file a copy of the recorded notice or certificate of location by Oct. 22, 1979, the claim must be deemed abandoned and void.

Frank Otegui, 49 IBLA 40 (July 21, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file a copy of the certificate or notice of location of the claim with BLM within 90 days of the date of location of the claim, failing which BLM properly rejects the untimely tendered document and declares the claim abandoned and void.

Henry D. Friedman, 49 IBLA 97 (July 28, 1980)

MINING CLAIMS--ContinuedLOCATICN--Continued

Where a mining claim located on land withdrawn at the time of location is declared void at initic, such a location, and the decisicn declaring such a location void, do not affect the status of any loccation of the same land made prior to the withdrawal; nor can such a location, made by a party with an interest in the prior location, reestablish or protect rights to the prior claim.

Jack C. Franks, 49 IBLA 162 (July 30, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a), 3833.2-1(a), 3833.4, for a mining claim located on or before Oct. 21, 1976, a copy of the notice or certificate of location and evidence of assessment work or notice of intention to hold must be filed with the Bureau of Land Management by Oct. 22, 1979, or the claim shall be deemed abandoned and void.

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

For a mining claim located on or before Oct. 21, 1976, under 43 U.S.C. § 1744 (1976), 43 CFR 3833.1-2(a) and 3833.4, a copy of the recorded notice or certificate of location must be filed with the appropriate BLM state office by Oct. 22, 1979, or the claim shall be conclusively deemed to be abandoned and void.

Virgil M. Taylor, Elizabeth Hutton, 49 IBLA 329 (Aug. 25, 1980)

Under 43 CFR 3833.1-2(a) and 3833.4(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice or certificate of location with the Bureau of Land Management by Oct. 22, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

Hugh A. Johnson, 50 IBLA 47 (Sept. 9, 1980)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file an instrument required by secs. 3833.1 and 3833.2 of this title within the time period prescribed therein shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it shall be void.

Tod Anderson, 50 IBLA 66 (Sept. 17, 1980)

In the absence of a discovery on a surface outcrop of a vein and in the absence of a clearly exposed vein on the surface of the ground, a projection vertically upward to the surface from the discovery points shown on a mineral survey is acceptable to identify the center line of a lode claim for location purposes. Where a Government contest complaint against a mining claim charges that a mineral survey is improperly executed, the charge is properly dismissed.

United States v. Cornelius F. Mannix, 50 IBLA 110 (Sept. 24, 1980)

MINING CLAIMS--ContinuedLOCATION--Continued

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of Location." The date of location of mining claims is determined in accordance with the law of the State where the claims are situated. Under California law, the time for recordation in the county is measured from the date of the posting of the location notice on the claims.

The dates of location of mining claims as shown on the notices of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are "typographical errors."

Lee Resources Management Corp., 50 IBLA 131 (Sept. 24, 1980)

Where a person has located a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file timely with the proper office of the Bureau of Land Management a copy of the notice or certificate of location of a mining claim is deemed conclusively to constitute an abandonment of the mining claim by the owner.

The Department of the Interior, as agency of Executive Branch of Government, is not proper forum to decide whether or not as to mining claims the recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Ahner Need, 50 IBLA 141 (Sept. 26, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

John F. Schmelzer, 51 IBLA 188 (Dec. 2, 1980)

Pursuant to 43 CFR 3833.1-1, an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 Oct. 20, 1976), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

Arley C. Burke, 51 IBLA 224 (Dec. 10, 1980)

MINING CLAIMS--ContinuedLOCATION--Continued

Where a person locates mining claims on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site by the owner.

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 22, 1979, and the check submitted was returned by the bank as uncollectible, the mining claims located prior to Oct. 21, 1976, are deemed abandoned and void.

John J. Dunsmore et al., 51 IBLA 297 (Dec. 17, 1980)

LODE CLAIMS

To constitute a discovery on a lode mining claim there must be physically exposed within the limits of the claim a lode or vein bearing mineral of such quality and in such quantity as to warrant a man of ordinary prudence in the expenditure of his labor and means, with a reasonable prospect of success, in attempting to develop a valuable mine; it is not enough to show that the exposed mineralization is sufficient to warrant holding a claim with a reasonable hope that at some time in the future the land embraced therein may become valuable for mining.

United States v. Robert Chambers, 47 IBLA 102 (Apr. 23, 1980)

MARKETABILITY

Uncontradicted evidence of nonproduction of a mining claim, which has continued over a period of years, is sufficient, without more, to establish a prima facie case of invalidity of the mining claim.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This "prudent man" test has been refined and complemented by the "marketability" test requiring a showing that the mineral in question can be presently extracted, removed, and marketed at a profit.

United States v. W. G. Nickol, Eva Rose Nickol, 47 IBLA 183 (May 7, 1980)

In determining whether a claimant has made a discovery, the present costs of mining, removing, and marketing the minerals involved are properly considered.

United States v. Cornelius F. Mannix, 50 IBLA 110 (Sept. 24, 1980)

MINING CLAIMS--ContinuedMARKETABILITY--Continued

The Supreme Court has determined that a finding of present marketability as of Feb. 25, 1920, is not a prerequisite to a determination that oil shale deposits are valuable mineral deposits within the meaning of the general mining laws, and has excepted oil shale claims from the general rules of discovery for mining claims.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

Under Andrus v. Shell Oil Co., ___ U.S. ___, 64 L.Ed.2d 593 (1980), 48 U.S.L.W. 4603 (June 2, 1980), oil shale is a prospectively valuable mineral and therefore present marketability need not be shown to demonstrate discovery.

United States v. Cameron Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al. (Supp.), 51 IELA 97 (Nov. 5, 1980)

87 I.D. 535

MILLSITES

An application for a millsite patent is properly rejected where the applicant can allege only past use of the millsite for mining or milling purposes pursuant to 30 U.S.C. § 42 (1976). An application for a millsite patent is properly rejected where use of the millsite within the terms of 30 U.S.C. § 42 (1976) depends upon the future discovery of minerals.

So long as the legal title to public lands remains in the United States, it has the power, after proper notice and upon adequate hearing, to determine whether a millsite claim is valid, and if it be found invalid, to declare it null and void.

United States of America v. Utah International, Inc., 45 IBLA 73 (Jan. 17, 1980)

Sec. 15 of the Act of May 10, 1872, 30 U.S.C. § 42 (1976), requires that a millsite be used or occupied distinctly and explicitly for mining or milling purposes. Where a cabin on a millsite is used for residential purposes and the use of the cabin for mining purposes is only incidental to its use as a residence, the millsite must be declared null and void.

A mineral claimant who has not made a discovery of a valuable mineral deposit within the limits of his lode or placer mining claims is not the proprietor of a "vein, lode or placer" within the context of 30 U.S.C. § 42 (1976), and cannot establish any right to a millsite claim based on such unperfected mining locations.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

MINERAL LANDS

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the lands embraced by a mining claim are not mineral in character can raise two discrete issues. First, it can challenge the validity of the entire claim. Alternatively, it can be applied to placer claims which are supported by a discovery, with the effect that the claimant must show that each 10 acres of the claim are mineral in character.

United States v. Clare Williamson and Larine Pumice Co., 45 IBLA 264 (Feb. 4, 1980)

87 I.D. 34

MINING CLAIMS--ContinuedMINERAL LANDS--Continued

Although placer claims may be validated by a single discovery, each 10-acre subdivision embraced by the claim must be mineral in character. Land is mineral in character when known conditions engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end.

United States v. W. G. Nickol, Eva Rose Nickol, 47 IELA 183 (May 7, 1980)

PLACER CLAIMS

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2.

Big Horn Limestone Co., 46 IELA 98 (Feb. 28, 1980)

Although placer claims may be validated by a single discovery, each 10-acre subdivision embraced by the claim must be mineral in character. Land is mineral in character when known conditions engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end.

United States v. W. G. Nickol, Eva Rose Nickol, 47 IELA 183 (May 7, 1980)

Under Andrus v. Shell Oil Co., ___ U.S. ___, 64 L.Ed.2d 593 (1980), 48 U.S.L.W. 4603 (June 2, 1980), oil shale is a prospectively valuable mineral and therefore present marketability need not be shown to demonstrate discovery.

To demonstrate a sufficient discovery of oil shale under Freeman v. Summers, 52 I.D. 201 (1927), a mining claimant must show that mineral was disclosed on or before Feb. 25, 1920, in such situation and such formation that he can follow the deposit to depth with reasonable assurance that paying minerals will be found. An isolated bit of mineral, not connected with or leading to substantial prospective values, is not a sufficient discovery.

United States v. Cameron Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al. (Supp.), 51 IELA 97 (Nov. 5, 1980)

87 I.D. 535

POSSESSORY RIGHT

Mining claims are properly declared null and void ab initio when they are located during a period when the lands are withdrawn from entry under the mining laws. However, under 30 U.S.C. § 38 (1976), if a person or predecessors-in-interest have held and worked the claims for a period of time equal to that prescribed by the state statute of limitations for adverse possession of mining claims, during which period the land was open to mineral location, that person is deemed to have made proper locations. Whether the locations are valid depends on whether discoveries have been made on each claim within the meaning of the mining laws.

Dolores Olsen and Wesley F. Mace, et al., 45 IELA 232 (Feb. 4, 1980)

MINING CLAIMS--Continued

RECORDATION

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of Location." The date of location of a mining claim is determined in accordance with the law of the State where the claim is situated. Under Washington law, it is the date specified on the notice of location filed with the local recorder's office.

The date of location of a mining claim may not be changed by altering this date on the copy of the notice of location filed with BLM so that it reflects a date different than that in the original notice.

P. & S. Mining Co., 45 IBLA 115 (Jan. 23, 1980)

Where a mining claimant submits a copy of a notice of location in the BLM's Riverside, California, District Office, for a claim located after Oct. 21, 1976, he has not complied with 43 CFR 3833.1-2(b), even though the material was submitted in the District Office before the expiration of the 90-day deadline, as the notice has not been filed in the "proper BLM office," which is the BLM California State Office in Sacramento, as expressly provided by 43 CFR 3833.0-5(g) and 1821.2-1(d). Where the District Office forwards the information to the State Office but it does not arrive until after the 90-day deadline has passed, owing to its extremely late submission to the District Office, it is untimely, and the claim is properly declared abandoned and void under 43 CFR 3833.4(a).

C. F. Linn, 45 IBLA 156 (Jan. 23, 1980)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located before Oct. 21, 1976, is not supported annually on or before Dec. 31 of the calendar year following the calendar year he recorded the claim in the BLM office by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intention to abandon and that the failure to file the required statements with BLM was an oversight.

Jerry Copper, 45 IBLA 215 (Jan. 30, 1980)

If a mining claim is not timely recorded in accordance with the recordation provisions in the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), it is conclusively deemed abandoned and is void as a matter of law. A claimant who has no interest in maintaining a mining claim should not record it with the Bureau of Land Management.

Where a mining claimant timely tendered payment to cover service fees for recording 70 mining claim notices of location, but also included four additional mining claim notices which she did not intend to maintain but filed merely for informational purposes, and on appeal she clarifies her intent concerning the four claims and unclear markings on maps which were to show that the four claims were "canceled," the payment and filing will be deemed to have been timely made as to the 70 claims if payment is subsequently made pursuant to a notice given.

Ann M. Warnke, 45 IBLA 305 (Feb. 6, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

"Copy of the Official Record of the Notice or Certificate of Location." Under the revised definition of the term at 43 CFR 3833.0-5(i) (1979), a duplicate of a notice of location which has been filed with the local recorder is a "copy of the official record of the notice or certificate of location," even though it is not stamped by the local recorder and does not include a reference to the local record, and is therefore acceptable under 43 CFR 3833.1-2(b) if tendered within 90 days of the date of location.

Where it benefits the affected party to do so, and where there are no intervening rights which will be adversely affected, a mining claim recordation regulation which is amended while the matter is pending may be applied in its amended form.

James E. Strong, 45 IBLA 386 (Feb. 13, 1980)

Where regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976 require reference to the Bureau of Land Management serial number under which a mining claim is recorded for future recordings, a claimant fails to include the number when he files a notice of assessment work, and he is specifically informed of this and other requirements, but fails to furnish the number, the filing is unacceptable, and failure to comply with the filing requirements constitutes abandonment of the claim, as provided by the Act.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, has until Oct. 22, 1979, to record the location. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned.

H. L. Smith, 46 IBLA 62 (Feb. 22, 1980)

Under 43 U.S.C. § 1744(b) (1976) the owner of an unpatented mining claim located before Oct. 21, 1976, must file with BLM, a copy of the notice of location before Oct. 22, 1979, or the claim will be conclusively deemed to have been abandoned under 43 U.S.C. § 1744(c). Mining claimants are not relieved of the requirement to timely file their documents where such documents may have been lost in the mail.

Where an unpatented mining claim is located after Oct. 21, 1976, a claimant has 90 days from the date of the new location to file with BLM a copy of the notice of location and if he does so file, BLM should proceed with recordation of the new claim.

Everett Young, 46 IBLA 74 (Feb. 22, 1980)

Where a mining claimant attempts to file notices of location for six claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only four of such claims, BLM shall require the claimant to select four claims to which the money tendered shall be applied. The remaining two claims are properly declared abandoned and void in accordance with 43 CFR 3833.4.

Robert L. Steele, 46 IBLA 80 (Feb. 22, 1980)

MINING CLAIMS--ContinuedRECORDATION--Continued

If a mining claim is located after Oct. 21, 1976, and the locator fails to record the claims with the proper State Office of the Bureau of Land Management within 90 days afterward, the Department must conclusively deem the claims abandoned and declare them null and void. The fact that the claimant was not notified of the rejection of his filings soon enough to enable him to relocate the claims prior to a time when any intervening claims of right may have arisen does not permit the Department to withhold the consequences of invalidity mandated by the statute.

George D. Duffy, 46 IBLA 127 (Feb. 29, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Nov. 7, 1979, the recordation date of the notice of location is Nov. 7, 1979. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Nov. 7, 1979, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claim must be deemed abandoned and void.

Nevada Pacific Co., Inc., 46 IBLA 208 (Mar. 24, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

John Walter Chaney, 46 IBLA 229 (Mar. 27, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Beryl Rhodes, 46 IBLA 287 (Mar. 31, 1980)

George Toole, 47 IBLA 89 (Apr. 21, 1980)

Arthur W. Schmidt, 47 IBLA 143 (May 6, 1980)

Allen J. Maxwell, Mary A. Janusz, 47 IBLA 306 (May 19, 1980)

Paul B. Rhodes, 48 IBLA 90 (May 29, 1980)

Don R. Bird et al., 49 IBLA 94 (July 22, 1980)

Herb Ballou, 49 IBLA 225 (Aug. 12, 1980)

MINING CLAIMS--ContinuedRECORDATION--Continued

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Phyllis Wood et al., 46 IBLA 309 (Apr. 4, 1980)

Eeth Mallory, 47 IBLA 296 (May 19, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), unless the required copy of the official record of location is filed in the proper ELM office within 90 days from the date of location, a mining claim, located after Oct. 21, 1976, is properly deemed abandoned and void.

A question as to the date of location of a mining claim is to be resolved according to state law, pursuant to 43 CFR 3833.1-5(h).

E. J. Holmes, 46 IBLA 316 (Apr. 4, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Glen J. McCrorey and Deloris McCrorey, 46 IBLA 355 (Apr. 8, 1980)

M. E. Rogers, 47 IBLA 196 (May 7, 1980)

Edwin Forstberg, 47 IBLA 235 (May 13, 1980)

Jean L. Greene, 47 IBLA 309 (May 19, 1980)

Andy Syndstad, 48 IBLA 87 (May 29, 1980)

John Hudspeth, Floreine Hudspeth, 48 IBLA 99 (May 29, 1980)

Joe Ropic, 48 IBLA 255 (June 26, 1980)

Robert E. Pcnahue, 50 IBLA 374 (Oct. 21, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim was submitted to ELM for recordation on Oct. 22, 1979, the deadline date, and the filing fee therefore is not paid to ELM until after the deadline for filing had passed, the mining claim must be deemed abandoned and void.

L. Leon Jennings, Mansfield L. Jennings, Gilbert M. Jennings, 47 IBLA 47 (Apr. 14, 1980)

R. L. Durrant, Nod Mulville, E. F. Karn, 47 IBLA 206 (May 13, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official notice of location or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, failing which the claim is properly deemed abandoned and void.

Sheldon Margen, 47 IBLA 118 (Apr. 28, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Timely transmittal of the documents to the wrong BLM Office does not meet the requirements where the documents are not filed in the proper office timely.

John S. Henson, 47 IBLA 129 (Apr. 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A document received by BLM on Oct. 24, 1979, is not timely filed.

Dwight F. Kennedy, 47 IBLA 132 (Apr. 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing in a BLM District Office rather than the designated BLM State Office is not sufficient.

John Sloan, 47 IBLA 146 (May 6, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Fred A. Dunham, 47 IBLA 152 (May 6, 1980)

Edward G. Taylor, 47 IBLA 286 (May 15, 1980)

George J. Burnett, 50 IBLA 124 (Sept. 24, 1980)

Lorraine Mohr, 50 IBLA 147 (Sept. 26, 1980)

County of Imperial, 51 IBLA 250 (Dec. 15, 1980)

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MINING CLAIMS--Continued

RECORDATION--Continued

Stephen Greist, 51 IBLA 287 (Dec. 17, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Documents filed in the proper BLM office after that date cannot be accepted even if they were erroneously transmitted to the Montana Department of Natural Resources before that date and were on file with the county office.

Jeanne G. Cwens, 47 IBLA 172 (May 7, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Documents received in the Bureau of Land Management's Burns, Oregon, District Office on Oct. 22, 1979, are not timely filed in the proper BLM office, where pursuant to 43 CFR 1821.2-1(d), the proper office with jurisdiction over the area in which the claim is located is the Oregon State Office in Portland, and the documents are not received in the State Office until after Oct. 22, 1979.

Floyd Zaiger, 47 IBLA 204 (May 7, 1980)

The owner of an unpatented mining claim on Federal lands located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location in the proper BLM office. Recordation is effected by filing a copy of the official record of the location notice or certificate with the proper BLM office and payment of a service charge of \$5 per claim.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid.

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year, or a notice of intention to hold the mining claim.

Failure to comply with the regulations governing recordation of notice of location or assessment work or notice of intention to hold mining claims must result

MINING CLAIMS--ContinuedRECORDATION--Continued

in a conclusive finding that the mining claim has been abandoned and is void.

G. H. Monk, 47 IBLA 213 (May 13, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Appellant's attempt to mail the documents on Saturday, Oct. 20, 1979, will not excuse late filing even though he was told by the Post Office that the documents would be in Phoenix by Monday, Oct. 22, 1979.

Ray F. Coffee, 47 IBLA 217 (May 13, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The requirements are not met where documents are not received by the proper BLM office until Oct. 25, 1979, even though the claimant had the envelope date stamped by a different BLM office on Oct. 22, 1979, before mailing it to the proper office.

Santa Fe Nuclear, Inc., 47 IBLA 220 (May 13, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 2, 1979, and the service fee therefor is not paid to BLM until Oct. 29, 1979, the recordation date of the notice is Oct. 29, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Oct. 29, 1979, is not timely filed.

Charles P. Seel, 47 IBLA 229 (May 13, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned and is void. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim with the proper Bureau

MINING CLAIMS--ContinuedRECORDATION--Continued

of Land Management Office on or before Oct. 22, 1979, accompanied by the proper fee.

Carl A. Forstrom, 47 IBLA 232 (May 13, 1980)

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claims have been abandoned and are void.

Andrew W. Berg, 47 IBLA 238 (May 13, 1980)

Where the owner of an unpatented mining claim located before Oct. 21, 1976, files a copy of the original notice of location in the calendar year 1978, he is required by 43 CFR 3833.2-1(a) to file proof of assessment work for the assessment year ending on Aug. 31, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

A mining claimant's failure to file timely evidence of annual assessment work is not excused by alleged tardiness of the State recorder's office in recording this information and returning a record copy to claimant, as a claimant is permitted under 43 CFR 3833.2-2(a) to satisfy the Federal filing requirements by submitting a duplicate of the assessment notice, even though it has not yet been filed for record with the State.

Harry J. Phillips, 47 IBLA 252 (May 13, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where certificates of location of mining claims are submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Feb. 25, 1980, the recordation date of the notices of location is Feb. 25, 1980. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Feb. 25, 1980, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claims must be deemed abandoned and void.

Cecil V. Clifford, Jr., 47 IBLA 262 (May 13, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Where a mining claim is located on July 4, 1976, and recorded with BLM on Jan. 23, 1978, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. Evidence of assessment work received on Dec. 3, 1979, is not filed timely and the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

Jim Adams, 47 IBLA 281 (May 15, 1980)

MINING CLAIMS--ContinuedRECORDATION--Continued

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Where a mining claimant submits a copy of a notice of location to the BLM District Office at Burley, Idaho, for a claim located prior to Oct. 21, 1976, he has not complied with 43 CFR 3833.1-2(a), even though the material was submitted to the District Office before the expiration of the statutory deadline of Oct. 22, 1979, as the location notice has not been filed in the "proper BLM office," which is the ELM Idaho State Office, in Boise, as expressly provided by 43 CFR 3833.0-5(g) and 1821.2-1(d), and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

Roy Tremayne, 47 IBLA 289 (May 15, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the service fee therefor is not paid to BLM until Nov. 13, 1979, the recordation date of the notice is Nov. 13, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 13, 1979, is not timely filed.

Loyal Dee Griggs, 47 IBLA 293 (May 15, 1980)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for a claim located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claim must be deemed abandoned and void.

David Mendenhall, 47 IBLA 298 (May 19, 1980)

Fleck Mining and Investment Co., 49 IBLA 187 (Aug. 6, 1980)

Gary Hansbrough, 50 IBLA 206 (Sept. 30, 1980)

MINING CLAIMS--ContinuedRECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of mining claims, were submitted to BLM for recordation and the filing fees therefor were not paid to BLM until after the deadline (90 days after the date of location) had passed, the mining claims must be deemed abandoned and void.

Virginia Edwards, 47 IBLA 301 (May 19, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned and is void. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979.

William and Marie Blanchard, 47 IBLA 312 (May 19, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 11, 1979, and the service fee therefor is not paid to BLM until Nov. 20, 1979, the recordation date of the notice is Nov. 20, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 20, 1979, is not timely filed.

Frank Franich, 47 IBLA 332 (May 21, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. A certificate of location received after Oct. 22, 1979, at the wrong BLM office is not timely filed and the mining claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

James H. Wardle, 47 IBLA 345 (May 21, 1980)

MINING CLAIMS--ContinuedRECORDATION--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

The "proper BLM office" is defined in 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). Where this latter regulation designates the Oregon State Office as the proper office, filing in a local Oregon office is not sufficient.

Tim Anderson, 47 IBLA 348 (May 21, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, must record the location on or before Oct. 22, 1979. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM Office.

The owner of an unpatented mining claim located prior to Oct. 21, 1976, and recorded with BLM in the calendar year 1977, must file affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30 of the calendar year following the calendar year in which the claim was recorded with BLM and failure to comply with the regulations governing recordation of such instruments must result in a conclusive finding that the claim has been abandoned.

Where mining claimants attempt to record their claims on Oct. 28, 1977, which were located prior to Oct. 21, 1976, but do not submit the mandatory service fee, as required by 43 CFR 3833.1-2(d), until May 3, 1978, recordation of the claims is effective as of May 3, 1978, and the claimants are not required to file evidence of annual assessment work until Oct. 22, 1979.

W. Verne Kight, Eva M. Kight, 47 IBLA 351 (May 21, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the location of the mining claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Anna M. Vance, 47 IBLA 357 (May 21, 1980)

Elsie Codd, 51 IBLA 43 (Oct. 30, 1980)

Ed Wardrobe, 51 IBLA 45 (Oct. 30, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact the Post Office returned mail enclosing the documents to the claimant because the envelope did not conform to postal requirements affords no basis for relief where the documents subsequently

MINING CLAIMS--ContinuedRECORDATION--Continued

were received by ELM after Oct. 22, 1979, as the statute gives no authority for waiving the late filing.

Tom Phelps, 47 IBLA 360 (May 21, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the filing fee thereof is not paid to BLM until Mar. 10, 1980, the recordation date of the notice is Mar. 10, 1980.

Willur Martin, 47 IBLA 370 (May 21, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

The Federal Land Policy and Management Act of 1976 does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

Sylvan S. Hewitt, Dennis Wallace, 47 IBLA 393 (May 22, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Where a copy of the notice or certificate of location is on file at the BLM Phoenix District Office in relation to trespass action and the \$5 filing fee is not received in the BLM Arizona State Office until after the deadline, the certificate of location is not timely filed and the mining claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Mitsuko Flick, 48 IBLA 1 (May 27, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the Post Office assured the claimant that the documents would reach the Oregon State Office by Oct. 22, 1979, will not excuse the late filing.

Norman E. Brooks, 48 IBLA 16 (May 27, 1980)

MINING CLAIMS--ContinuedRECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location and related material for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. File means being received and date stamped by the proper BLM office. Failure to so file is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Robert Willing et al., 48 IBLA 39 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode or placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner. A question as to the date of location is to be resolved according to state law, pursuant to 43 CFR 3833.0-5(b).

Larry Lahusen, Jay Coates, 48 IBLA 43 (May 29, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location and file a copy of the recorded affidavit of assessment work or notice of intention to hold. Recordation is effected by filing a copy of the location notice or certificate with the proper ELM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Bernard A. Schmid, 48 IBLA 48 (May 29, 1980)

Where the owner of an unpatented mining claim located prior to, but recorded with BLM after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Alice E. Deetz, 48 IBLA 59 (May 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979,

MINING CLAIMS--ContinuedRECORDATION--Continued

or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper ELM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Ross W. Mathews, 48 IBLA 71 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Johnnie Finnegan, Don E. Gordon, Carl Holder, 48 IBLA 79 (May 29, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office prior to Oct. 22, 1979. A copy of the location certificate, which is not an exact replica or machine copy of the recorded certificate, but which contains the same language and is filed timely will be accepted as complying with the laws and regulations.

Wilma Hartley, 48 IBLA 83 (May 29, 1980)

Where a claimant timely files notices of location for recordation of his mining claims and submits a sketch map and narrative description of the location of the claims sufficient to locate the claimed lands on the ground, and identifies the claims by section, township, range, meridian, and state, he has met the requirements of sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2(c) (5) and (6).

Robert H. Lawson, 48 IBLA 93 (May 29, 1980)

Where the owners of unpatented mining claims located before Oct. 21, 1976, fail to file copies of the original notices of location with the proper ELM office on or before Oct. 22, 1979, their claims are properly held to be abandoned and void.

Jean C. Leffer et al., 48 IBLA 103 (May 29, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.2-1, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location and a copy of the recorded affidavit of assessment work or notice of intention to hold the claim, with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

Helen E. Wallace, 48 IBLA 127 (May 30, 1980)

The owner of a mining claim located on or before Oct. 21, 1976, had until Oct. 22, 1979, to record a copy of the location notice with Bureau of Land Management and pay the required service fee, and where the fee was not paid 43 CFR 3833.1-2(d) requires that the notice of location be returned as unacceptable.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to timely file an instrument required by 43 CFR 3833.1-2 constitutes an abandonment of the mining claim, and it is deemed to be void.

George B. Flewelling, 48 IBLA 141 (May 30, 1980)

Under 43 U.S.C. § 1744 (b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A document required to be filed on or before Oct. 22, 1979, and received by BLM on Jan. 8, 1980, is not timely filed.

James E. Cooper, 48 IBLA 175 (June 9, 1980)

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

Robert Alameda et al., 48 IBLA 178 (June 9, 1980)

Under 43 U.S.C. § 1744 (b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744 (c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual

MINING CLAIMS--Continued

RECORDATION--Continued

assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), gives no authority to the Department of the Interior to accept for mining claim recordation documents submitted after the statutory time requirements as if they were timely filed in order to avoid the consequences of the statute.

John F. Sherwood, 48 IBLA 180 (June 9, 1980)

George L. Harrison, 49 IBLA 157 (July 30, 1980)

Under sec. 314 (b) of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (b) (1976), and 43 CFR 3833.1-2 (b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, within 90 days after the date of location of such claim, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner. The "date of location" is determined by reference to the law of the state in which the claim is situated.

C. A. Gussman, 48 IBLA 193 (June 9, 1980)

Under sec. 314 (b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (b) (1976) and 43 CFR 3833.1-2, the owner or owners of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to file will conclusively be deemed an abandonment of the claim and it shall be void.

Lowell Becker, Billie Peterson, 48 IBLA 203 (June 16, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. Under 43 CFR 3833.1-2 there is no express requirement that a machine reproduction be provided. Accordingly, a handwritten duplicate of a notice of location is acceptable under the regulations.

W. C. Miles, 48 IBLA 214 (June 16, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

A. J. Grady, 48 IBLA 218 (June 16, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where a mining claim is located on Aug. 20, 1970, and recorded with BLM on Nov. 14, 1978, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

A. W. Josue, 48 IBLA 225 (June 16, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Laura Mae Hopper, 48 IBLA 253 (June 26, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b) and 3833.4, the owner of an unpatented mining claim located after Oct. 21, 1976, shall file within 90 days after the date of location in the proper BLM office a copy of the official record of the notice or certificate of location, or the claim must be deemed abandoned and void.

James White, 48 IBLA 346 (July 3, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Armando Majalca, 48 IBLA 351 (July 11, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to comply with the regulations governing recordation of notices of location or the filing of evidence of assessment work or a notice of intention to hold mining claim must result in a conclusive finding that the mining claim has been abandoned and is void.

Collie L. Glaab, 48 IBLA 404 (July 11, 1980)

Max Weiss, 49 IBLA 332 (Aug. 25, 1980)

Under 43 U.S.C. § 1744 (1976) if the owner of a mining claim located on or before Oct. 21, 1976, does not file a copy of the recorded notice or certificate of location by Oct. 22, 1979, the claim must be deemed abandoned and void.

Frank Otegui, 49 IBLA 40 (July 21, 1980)

A mining claimant may file a notice of intention to hold its mining claims in lieu of evidence of annual assessment work performed thereon only where the obligation to perform the annual assessment work has been suspended or deferred or has not yet accrued. Where the record indicates no such circumstances and shows to the contrary that the claimant was required to and did perform this work in the preceding assessment year, filing notices of intention will not suffice.

A notice of intention to hold a group of mining claims must meet the requirements set out at 43 CFR 3833.2-3(a), and must include, *inter alia*, a clear statement of the reason why the annual assessment work was not performed. This requirement is impossible of satisfaction where the claimant in fact did the assessment work.

A failure to file evidence of annual assessment work for the preceding assessment year is not excused by 43 CFR 3833.4(b), which provides that a filing which complies with FLPMA may not be deemed invalid because of its failure to meet the requirements of other laws.

Alaskanin Co., 49 IBLA 43 (July 21, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file a copy of the certificate or notice of location of the claim with BLM within 90 days of the date of location of the claim, failing which BLM properly rejects the untimely tendered document and declares the claim abandoned and void.

Copies of mining claim certificates or notices of location which are required to be filed within 90 days of the date of location of a claim are not timely filed where they are placed in the mail prior to the deadline but are not received or date stamped by BLM until after the deadline.

Where a mining claimant merely asserts that because of a 9-day difference between the posting of an envelope and the date received stamp of BLM, BLM may have mishandled notices of location submitted in attempted compliance with the requirements of 43 CFR 3833.1-2(b), allegedly causing them to be date stamped by BLM as untimely, and there is nothing else in the record to support this conjecture he has not met the burden of

MINING CLAIMS--Continued

RECORDATION--Continued

rebutting the presumption that BLM officials have properly discharged their duties in receiving and promptly date stamping all such notices tendered to them.

Henry D. Friedman, 49 IBLA 97 (July 28, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner.

Ross Weaver, 49 IBLA 111 (July 28, 1980)

George W. Cole, 49 IBLA 128 (July 28, 1980)

Cripple Creek Exploration Corp., 49 IBLA 190 (Aug. 6, 1980)

Alfred Letcher, 49 IBLA 193 (Aug. 6, 1980)

Under 43 U.S.C. § 1744 (b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744 (c) (1976) and 43 CFR 3833.4. The statute and regulations governing recordation of mining claims are mandatory and where a mining claimant contends that he mailed his notices of location along with other documents which were received by the Bureau of Land Management 1 day after the filing date, the claims are properly declared abandoned and void.

G. R. Marguardson, 49 IBLA 114 (July 28, 1980)

Under 43 U.S.C. § 1744 (b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744 (c) (1976) and 43 CFR 3833.4. Filing in the Utah State Office rather than the Wyoming State Office is not sufficient.

Interstate Brick, 49 IBLA 125 (July 28, 1980)

Interstate Brick, 50 IBLA 107 (Sept. 17, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 19, 1979, and the filing fee therefor is not paid to BLM until Feb. 11, 1980, the date of filing for recordation of the notice is Feb. 11, 1980.

Lawrence Jacob, Freeda Jacob, 49 IBLA 137 (July 28, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Under 43 U.S.C. § 1744 (b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744 (c) (1976) and 43 CFR 3833.4.

Iela M. Osborn, 49 IBLA 146 (July 30, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, the owner of an unpatented mining claim located before Oct. 21, 1976, had to file in the proper office of the Bureau of Land Management a copy of the official record of the notice or certificate of location and an affidavit of assessment work performed on the claim on or before Oct. 22, 1979. Where the owner of an unpatented mining claim failed to file either instrument within the prescribed time, the claim is deemed conclusively to be abandoned and void.

George Stillman, 49 IBLA 150 (July 30, 1980)

Under 43 U.S.C. § 1744 (b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744 (c) (1976) and 43 CFR 3833.4. The fact that appellant lost or misplaced the required documents and had to send away for new ones will not excuse late filing.

Gale F. Powell, 49 IBLA 173 (July 30, 1980)

Under sec. 314 (b) of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (b) (1976), and 43 CFR 3833.1-2 (b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, within 90 days after the date of location of such claim, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner. The "date of location" is determined by reference to the law of the State in which the claim is situated.

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Weldcn Mead Kennedy, Elmer Devore, 49 IBLA 180 (July 31, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a), 3833.2-1(a), 3833.4, for a mining claim located on or before Oct. 21, 1976, a copy of the notice or certificate of location and evidence of assessment work or notice of intention to hold must be filed with the Bureau of Land Management by Oct. 22, 1979, or the claim shall be deemed abandoned and void.

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

MINING CLAIMS--ContinuedRECORDATION--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of a claim or site are submitted to BLM for recordation on Dec. 26, 1979, and the filing fee therefor is not paid to BLM until Jan. 23, 1980, the recordation date of the notices is Jan. 23, 1980.

Brewery Hill Mining Co., Inc., 49 IBLA 197 (Aug. 6, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Glen Hocking, 49 IBLA 217 (Aug. 11, 1980)

Nila Tyrrel, 49 IBLA 267 (Aug. 18, 1980)

Lost Pollack Mining and Exploration, Ltd., 50 IBLA 227 (Sept. 30, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Mining claims located after the enactment of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, must be deemed abandoned and void if a copy of the notice of location or certificate of location is not filed with the proper Bureau of Land Management Office within 90 days after the date of location of such claims.

Darlene Y. Haymes et al., 49 IBLA 243 (Aug. 18, 1980)

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and BLM properly rejects a copy of a notice of location of a lode claim insofar as it covers patented land. However, BLM should not reject the notice insofar as it concerns unpatented lands, provided that the claim conforms to the rules governing lode claims after being amended to exclude the patented areas.

Samuel A. Chesebrough, 49 IBLA 249 (Aug. 18, 1980)

MINING CLAIMS--ContinuedRECORDATION--Continued

For a mining claim located on or before Oct. 21, 1976, under 43 U.S.C. § 1744 (1976), 43 CFR 3833.1-2(a) and 3833.4, a copy of the recorded notice or certificate of location must be filed with the appropriate BLM state office by Oct. 22, 1979, or the claim shall be conclusively deemed to be abandoned and void.

Virgal M. Taylor, Elizabeth Hutton, 49 IBLA 329 (Aug. 25, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, 3833.2-1, and 3833.4, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location and a copy of the recorded affidavit of assessment work or notice of intention to hold the claim, with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

John Lincoln, Jr., 49 IBLA 335 (Aug. 25, 1980)

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year, or a notice of intention to hold the mining claim.

Mark G. Jones, 49 IBLA 378 (Sept. 5, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Where a placer mining claim was located in 1975, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. If no evidence of assessment work has been timely filed with BLM, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

Vernon G. & Shirley S. Wickham, 50 IBLA 1 (Sept. 5, 1980)

An appeal from a decision declaring mining claims abandoned and void because of failure to meet the recordation requirements of the Federal Land Policy and Management Act of 1976 may be dismissed where the appellant failed to file her statement of reasons or request for a further extension of time to file a statement within time granted by the Board and she does not satisfactorily show why a request was not timely filed, and there is no likelihood she could prevail on the merits of the case in any eventuality.

The Board of Land Appeals has no authority to waive the strict requirements of the Federal Land Policy and Management Act of 1976 for recording mining claims, and where the requirements have not been met for a claim, the claim is properly declared abandoned and void.

Eloise Joyce Williamsen, 50 IBLA 42 (Sept. 9, 1980)

MINING CLAIMS--ContinuedRECORDATION--Continued

Under 43 CFR 3833.1-2(a) and 3833.4(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice or certificate of location with the Bureau of Land Management by Oct. 2, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

Hugh A. Johnson, 50 IBLA 47 (Sept. 9, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. The owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of mining claims are mandatory and where BLM has not received a notice of location, the claim is properly declared abandoned and void.

Margaret Covert, 50 IBLA 58 (Sept. 15, 1980)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file an instrument required by secs. 3833.1 and 3833.2 of this title within the time period prescribed therein shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it shall be void.

Tom Anderson, 50 IBLA 66 (Sept. 17, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management Office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

The filing of the notice of location of a mining claim does not meet the requirement for filing a notice of intention to hold the mining claim.

Don Sagmoen, Perry Adkison, Ward I. Jones, 50 IBLA 84 (Sept. 17, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the documents had been deposited in the mail and postmarked by the postal

MINING CLAIMS--ContinuedRECORDATION--Continued

authorities Oct. 22, 1979, will not excuse the late filing.

Eleen Holland et al., 50 IBLA 121 (Sept. 24, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Clifford J. Kelch, 50 IBLA 127 (Sept. 24, 1980)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with EIM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of Location." The date of location of mining claims is determined in accordance with the law of the State where the claims are situated. Under California law, the time for recordation in the county is measured from the date of the posting of the location notice on the claims.

The dates of location of mining claims as shown on the notices of location recorded in compliance with State law will be treated as controlling where, after rejection by EIM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are "typographical errors."

Lee Resources Management Corp., 50 IBLA 131 (Sept. 24, 1980)

Where a person has located a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file timely with the proper office of the Bureau of Land Management a copy of the notice or certificate of location of a mining claim is deemed conclusively to constitute an abandonment of the mining claim by the owner.

The Department of the Interior, as agency of Executive Branch of Government, is not proper forum to decide whether or not as to mining claims the recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Almer Wedd, 50 IBLA 141 (Sept. 26, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed evidence of assessment work performed during the preceding assessment year or a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

John J. Schnabel, 50 IBLA 201 (Sept. 30, 1980)

MINING CLAIMS--ContinuedRECORDATION--Continued

It is proper to refuse to accept notices of location of mining claims submitted for recordation pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), when the claims are null and void because they are filed for lands on the outer continental shelf.

Ford MacElvain, 50 IBLA 303 (Oct. 7, 1980) 87 I.D. 478

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void and renders the claim void.

Cleo May Fresh, Marjorie P. Deterts, 50 IBLA 363 (Oct. 16, 1980)

Where the owner of unpatented mining claims located before Oct. 21, 1976, files copies of the notices of location of these claims prior to the Oct. 22, 1979, deadline for so doing, but fails to file evidence of annual assessment work during the preceding assessment year on or before this deadline, the claims are properly declared abandoned and void.

Stanley Bishop, 50 IBLA 371 (Oct. 21, 1980)

Joseph V. Dodge, d.b.a. Rocky Mountain Mineral Co., 50 IBLA 394 (Oct. 24, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented millsite located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. The owner of an unpatented millsite, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of millsite claims are mandatory and where BLM has not received a notice of location, the claim is properly declared abandoned and void.

Wayne E. Clutis, 50 IBLA 379 (Oct. 22, 1980)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void.

Melvin E. Viles, 51 IBLA 32 (Oct. 30, 1980)

MINING CLAIMS--ContinuedRECORDATION--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The statutory and regulatory requirements to file a notice of location are mandatory and failure to comply with them must result in a finding that the claims are void.

J. K. Kendrick, 51 IBLA 56 (Oct. 31, 1980)

Under 43 CFR 3833.1-2(d), the owner of unpatented mining claims must tender a filing fee of \$5 per claim when filing recordation information, or ELM properly rejects the filing as unacceptable. Where he submits information on or before the Oct. 22, 1979, deadline, but does not include this fee on or before this date, BLM properly regards this filing as unacceptable, so that the claims became void under 43 CFR 3833.4 when the deadline passed without an acceptable filing.

Where the owner of two mining claims files recordation information for two claims with ELM, but tenders only \$5 as a filing fee, this amount is insufficient to provide the required \$5 fee for both claims, and ELM properly may recognize only one claim as valid. In these circumstances, ELM properly requires the owner to select which claim to validate.

Eva Holmes et al., 51 IBLA 140 (Nov. 20, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

John F. Schwelzer, 51 IBLA 188 (Dec. 2, 1980)

Pursuant to 43 CFR 3833.1-1, an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 Oct. 20, 1976), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Gordon I. Cooper, 51 IBLA 191 (Dec. 5, 1980)

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims and ELM properly refuses recordation of such claims.

Silver Spot Metals, Inc., 51 IBLA 212 (Dec. 10, 1980)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

Arley C. Burke, 51 IBLA 224 (Dec. 10, 1980)

MINING CLAIMS--ContinuedRECORDATION--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the Post Office may have assured the claimant that the documents would reach the Colorado State Office by Oct. 22, 1979, will not excuse the late filing.

Clegborn and Washburn Mining Co., 51 IELA 265 (Dec. 15, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Edward W. Kramer, 51 IBLA 294 (Dec. 17, 1980)

Where a person locates mining claims on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site by the owner.

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 22, 1979, and the check submitted was returned by the bank as uncollectible, the mining claims located prior to Oct. 21, 1976, are deemed abandoned and void.

John J. Dunsmore et al., 51 IBLA 297 (Dec. 17, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim must file a map, narrative, or sketch depicting the location of his mining claim or site. A BLM decision dated Aug. 22, 1980, effectively advising a claimant that his claims are void because no map has been filed within 30 days of July 16, 1979, will be set aside as erroneous where the file contains a map of the claims which is BLM date stamped Aug. 3, 1979.

George Phil Martinez, 51 IBLA 330 (Dec. 29, 1980)

MINING CLAIMS--ContinuedRECORDATION--Continued

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a claimant files for recordation on Oct. 19, 1979, but the filing fee is not paid to BLM until after the deadline for filing, Oct. 22, 1979, the mining claim must be deemed abandoned and void.

Robert W. Miller, Marjorie Fieper Miller, 51 IELA 364 (Dec. 29, 1980)

RELOCATION

Where a mining claim located on land withdrawn at the time of location is declared void at initio, such a location, and the decision declaring such a location void, do not affect the status of any location of the same land made prior to the withdrawal; nor can such a location, made by a party with an interest in the prior location, reestablish or protect rights to the prior claim.

Jack C. Franks, 49 IELA 162 (July 30, 1980)

SPECIAL ACTS

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Water and Power Resources Service has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Florence Adkisson, 47 IELA 121 (Apr. 28, 1980)

WITHDRAWN LAND

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void at initio.

Conrad F. Scvik, 45 IBLA 14 (Jan. 8, 1980)

Jacqueline E. Nelson, 47 IELA 12 (Apr. 10, 1980)

Jack C. Franks, 49 IELA 162 (July 30, 1980)

W. Sreakman, J. Antrim, 51 IELA 283 (Dec. 15, 1980)

When land is withdrawn from all forms of entry, location, and exploration subsequent to location of a mining claim, the validity of such claim cannot be recognized unless (1) it was perfected by a discovery at the time of withdrawal, and (2) it has been continuously supported by the same discovery to the present; that is, at the time of the hearing.

United States v. Richard C. Clemens et al., 45 IELA 64 (Jan. 17, 1980)

A Forest Service special use permit issued to a state agency does not constitute a withdrawal of the land involved from appropriation under the mining law,

MINING CLAIMS--ContinuedWITHDRAWN LAND--Continued

and a contest will not lie against a subsequently located mining claim on a charge that a portion of the claim is void to the extent that it includes land embraced by the permit.

When land is withdrawn from location under the mining laws subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal to be valid.

A valid mining claim for lands previously withdrawn from location must be supported by discovery as of the date of withdrawal and a showing that marketability has continued since discovery and the minerals can presently be profitably extracted.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.E. 34

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Water and Power Resources Service has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Florence Adkisson, 47 IBLA 121 (Apr. 28, 1980)

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Harold M. Voris, 48 IBLA 206 (June 16, 1980)

When land is withdrawn from the operation of the mining laws subject to valid existing rights, as was the Death Valley National Monument on Sept. 28, 1976, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Ubehebe Lead Mines Co., 49 IBLA 1 (July 15, 1980)

A mining claim located on land temporarily segregated from appropriation under the mining laws pursuant to 43 U.S.C. § 1714(b) (1976) is null and void ab initio.

Under 43 U.S.C. § 1714(b) (1976) a publication in the Federal Register of notification of an application for withdrawal, which publication temporarily segregates land from the operation of the mining laws, does not withdraw the land, and therefore the notice need not be signed by the Secretary or an individual in the Office of the Secretary who has been appointed by the President, by and with the advice and consent of the Senate.

Stephen W. Fox, 50 IBLA 186 (Sept. 30, 1980) 87 I.E. 462

MINING CLAIMS--ContinuedWITHDRAWN LAND--Continued

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

George H. Ferrimore et al., 50 IBLA 280 (Oct. 6, 1980)

Mining claims located on land at a time the land is withdrawn from appropriation under the United States mining laws properly are declared null and void ab initio.

Marvin Mack, Petty K. Mack, 51 IBLA 30 (Oct. 30, 1980)

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of a withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location.

United States v. W. S. Wood et al., 51 IBLA 301 (Dec. 18, 1980) 87 I.E. 628

MINING CLAIMS RIGHTS RESTORATION ACT

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Harold M. Voris, 48 IBLA 206 (June 16, 1980)

MINING OCCUPANCY ACT

GENERALLY

Where EIM issues a decision to cancel a mining claim occupancy lease, which decision is based on a Forest Service report showing that someone other than the lessee has occupied the leased premises and that lessee has admitted that she was away from them; where lessee asserts that the claim is nevertheless "a principal place of residence" and requests a hearing; and where the record is insufficient to resolve this question, the matter will be referred for a hearing.

Viola D. Le Master, 51 IBLA 291 (Dec. 17, 1980)

PRINCIPAL PLACE OF RESIDENCE

Where EIM issues a decision to cancel a mining claim occupancy lease, which decision is based on a Forest Service report showing that someone other than the lessee has occupied the leased premises and that lessee has admitted that she was away from them; where lessee asserts that the claim is nevertheless "a principal place of residence" and requests a hearing; and where the record is insufficient to resolve this question, the matter will be referred for a hearing.

Viola D. Le Master, 51 IBLA 291 (Dec. 17, 1980)

MISTAKES

Even if it be established that the Department had not applied in previous years regulation 43 CFR 4115.2-1(e) (8) (1975), which requires termination of grazing privileges upon loss of ownership or control of base property, such failure to apply the regulation is not authority to further disregard the regulation.

Jimmie and Leona Ferrara, 47 IBLA 335 (May 21, 1980)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

MULTIPLE MINERAL DEVELOPMENT ACT

(See also Hearings, Mining Claims--if included in this Index.)

GENERALLY

Where sodium ions are commingled in a brine with calcium, potassium, and chlorine ions and no valuable deposit of a sodium or potassium compound is present, contestees' evaporation of such brine does not violate the Multiple Mineral Development Act, 30 U.S.C. §§ 521-531 (1976).

United States v. Levon Bardsley (Trustee), Marlene M. Bardsley, Individually and as Administratrix of the Estate of Donald H. Bardsley (Deceased), 45 IBLA 367 (Feb. 7, 1980)

An application for permit to drill for oil and gas in a "potash enclave" in a designated "Potash Area" is properly denied where the applicant fails to show that its application comes within either of the two exceptions to the policy in favor of potash development enunciated in an order of the Secretary dated Oct. 7, 1975, 40 FR 51486 (Nov. 5, 1975).

Bass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

(See also Environmental Policy Act--if included in this Index.)

GENERALLY

Public Land Order No. 2676 (1962), requires the approval of an authorized officer of the Department of the Army before the Secretary of the Interior can grant a right-of-way over lands subject to the public land order. The Department of the Interior has no authority to grant a right-of-way where the approval is withheld.

City of Anchorage, Alaska, and Jack G. Fisher, et al., a.k.a. Concerned Chugach Citizens v. Chugach Electric Ass'n, Inc., 45 IBLA 171 (Jan. 30, 1980) 87 I.L. 21

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

GENERALLY--Continued

The National Historic Preservation Act, Outer Continental Shelf Lands Act and National Environmental Policy Act authorize a stipulation which provides that a cultural resource included on or eligible for inclusion on the National Register which is discovered by an OCS lessee as a result of lease operations and which is salvaged, be made reasonably available to recognized scientific or educational institutions for study.

Clarification of Authorities and Responsibilities for Identifying and Protecting Cultural Resources on the Outer Continental Shelf, M-36928 (Nov. 24, 1980)

87 I.L. 593

ENVIRONMENTAL STATEMENTS

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed or review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

The grant of a right-of-way over public lands, authorizing the construction of a roadway involving some 6 acres of public lands in an area of approximately 5,700 acres, does not require the preparation of an environmental impact statement, as no major Federal action is present within the terms of 42 U.S.C. § 4332(c) (1976).

Oregon Wilderness Coalition, 45 IBLA 347 (Feb. 7, 1980)

Where a programmatic environmental impact statement (EIS) has been completed and this has been supplemented by a site-specific environmental analysis concerning the impacts, mitigating measures, and alternatives for a specified timber sale, the law does not require preparation of an individual EIS for the timber sale in the absence of a material change in circumstances or departure from policy covered in the overall EIS.

Preserve Our Scenic Environment, 47 IBLA 276 (May 15, 1980)

Where it is implicit in an administrative decision that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

The grant of a right-of-way over public lands, authorizing the construction of a roadway to provide access to a uranium mining property, where such grant is made contingent upon the necessary licenses being obtained prior to commencement of any mining activity, does not require the preparation of an environmental impact statement, as no major Federal action is present within the terms of 42 U.S.C. § 4332(c) (1976).

James I. Thompson, 51 IBLA 154 (Nov. 26, 1980)

NATIONAL HISTORIC PRESERVATION ACT

GENERALLY

Sec. 106 of the National Historic Preservation Act places a duty upon the Department to insure that issuance of authorizations on the OCS will not affect significant cultural resources without providing the Advisory Council on Historic Preservation the opportunity to comment. A rule of reason applies to the extent of the OCS lands to be studied and the degree of effort required.

Archival research is first required to determine whether significant cultural resources may be affected by activities on an OCS lease or right-of-way.

Cultural resource surveys should only be undertaken when the results of archival research indicate the likelihood that significant cultural resource will be affected by the undertaking and that the resource is capable of being detected at a reasonable cost and effort.

When cultural resources are identified on the OCS, it is appropriate to consider them for nomination to the National Register of Historic Places.

Sec. 106 of the National Historic Preservation Act authorizes the Department to require either by regulation or by stipulation in an OCS lease or right-of-way that the lessee or holder make cultural resource studies where evidence indicate that such resources may be affected by operations, and that information discovered by made available to the Department.

The National Historic Preservation Act, Outer Continental Shelf Lands Act and National Environmental Policy Act authorize a stipulation which provides that a cultural resource included on or eligible for inclusion on the National Register which is discovered by an OCS lessee as a result of lease operations and which is salvaged, be made reasonably available to recognized scientific or educational institutions for study.

The Outer Continental Shelf is not within the jurisdiction of a State Historic Preservation Office (SHPO). However, as a matter of comity, the recommendations of a SHEO as to OCS cultural resources should be carefully considered.

Clarification of Authorities and Responsibilities for Identifying and Protecting Cultural Resources on the Outer Continental Shelf, M-36928 (Nov. 24, 1980)

87 I.L. 593

NATIONAL PARK SERVICE

Mining claims located in units of the National Park System must be recorded within 1 year of the date of enactment of the Mining in the Parks Act, sec. 8 of the Act of Sept. 28, 1976, 16 U.S.C. § 1907 (1976), rather than within 3 years of the enactment of the Federal Land Policy and Management Act of 1976, Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976).

Elden A. LeRoy, Dorothy A. LeRoy, 49 IBLA 320 (Aug. 20, 1980)

Pursuant to 43 CFR 3833.1-1, an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 Oct. 20, 1976), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

NATIONAL PARK SERVICE AREAS

LAND

Mining

The Secretary of the Interior is not precluded from contesting a mining claim by the provisions of sec. 6, Act of Sept. 28, 1976, P.L. 94-429, 16 U.S.C. § 1905 (1976), where a contest complaint has been filed within 2 years of the date of enactment of the statute.

United States v. Roy Peterson & Charles B. Sweet, 47 IBLA 92 (Apr. 23, 1980)

NOTICE

GPNFRALLY

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Willene Minnier, 45 IBLA 1 (Jan. 8, 1980)

Robert W. Hansen, Federal Bentonite Co., 46 IBLA 93 (Feb. 28, 1980)

M. E. Rogers, 47 IBLA 196 (May 7, 1980)

Floyd Zaiger, 47 IBLA 204 (May 7, 1980)

Edwin Forstberg, 47 IBLA 235 (May 13, 1980)

Roy Trewayne, 47 IBLA 289 (May 15, 1980)

William J. Walker, Lewis Sandberg, 47 IBLA 385 (May 22, 1980)

Paul E. Rhodes, 48 IBLA 90 (May 29, 1980)

Helen E. Wallace, 48 IBLA 127 (May 30, 1980)

Kenneth K. Parker, 48 IBLA 129 (May 30, 1980)

James E. Cooper, 48 IBLA 175 (June 9, 1980)

A. J. Grady, 48 IBLA 218 (June 16, 1980)

Joe Ropic, 48 IBLA 255 (June 26, 1980)

Morrill A. Nielson, 48 IBLA 398 (July 11, 1980)

Rose M. Keegel, 49 IBLA 106 (July 26, 1980)

Ross Weaver, 49 IBLA 111 (July 26, 1980)

Glen Hocking, 49 IBLA 217 (Aug. 11, 1980)

Margaret J. Wilson, 49 IBLA 228 (Aug. 12, 1980)

Nila Tyrrel, 49 IBLA 267 (Aug. 18, 1980)

Tod Anderson, 50 IBLA 66 (Sept. 17, 1980)

Michael Jon McFarland, 51 IBLA 173 (Nov. 26, 1980)

Edward W. Kramer, 51 IBLA 294 (Dec. 17, 1980)

Robert W. Miller, Marjorie Firper Miller, 51 IBLA 364 (Dec. 29, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

John F. Sherwood, 48 IBLA 180 (June 9, 1980)

Armando Rajalca, 48 IBLA 351 (July 11, 1980)

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NOTICE--ContinuedGENERALLY--Continued

Vernon G. & Shirley S. Wickham, 50 IBLA 1 (Sept. 5, 1980)

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations.

Don and Mary L. Clark, 49 IBLA 11 (July 15, 1980)

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

Alfred Letcher, 49 IBLA 193 (Aug. 6, 1980)

John Lincoln, Jr., 49 IBLA 335 (Aug. 25, 1980)

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

Santa Monica Hospital Medical Center Foundation, 51 IBLA 194 (Dec. 5, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations regardless of their actual knowledge of what is contained in such regulations or statutes.

George L. Harrison, 49 IBLA 157 (July 30, 1980)

Those who deal with the Government are presumed to have knowledge of the law and regulations duly adopted pursuant thereto.

Don Sagmoen, Perry Adkison, Ward I. Jones, 50 IBLA 84 (Sept. 17, 1980)

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Lite Sabin, 51 IBLA 226 (Dec. 15, 1980) 87 I.D. 610

Where BLM sends by certified mail a notice to an offeror at his record address that he must file a certificate as to his qualification to hold an oil and gas lease, and the letter is returned to BLM marked "Not Deliverable as Addressed, Unable to Forward," and it is established that nondelivery was due to post office error, the appellant will not be considered to have received notice, and the rejection of the lease offer will be set aside.

Brooks Griggs, 51 IBLA 232 (Dec. 15, 1980) 87 I.D. 612

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

John Swanson, 51 IBLA 239 (Dec. 15, 1980)

OIL AND GAS LEASES

(See also Mineral Leasing Act, Outer Continental Shelf Lands Act--if included in this Index.)

GENERALLY

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

John C. Efield, 45 IEIA 84 (Jan. 17, 1980)

M. S. Mack, 45 IEIA 99 (Jan. 17, 1980)

Fernard Genccrelli, 46 IBLA 53 (Feb. 20, 1980)

Harry Ptasynski, 48 IBLA 246 (June 17, 1980)

Southern Union Exploration Co., 51 IEIA 149 (Nov. 26, 1980)

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

David A. Provinse, 45 IEIA 111 (Jan. 23, 1980)

Where on appeal from rejection of a simultaneous oil and gas lease offer, it is alleged that the offer designated "Milner Productions" was actually submitted on behalf of a sole proprietorship, and the drawing entry card does not show the last name, first name, and middle initial of an individual offeror, the lease offeror will be deemed unqualified under 30 U.S.C. § 181 (1976), and the offer not fully executed under 43 CFR 3112.2-1(a).

Tom Milner, 45 IBLA 119 (Jan. 23, 1980)

Where an offer for a noncompetitive oil and gas lease for acquired lands contains a defective description of the lands sought and prior to lease issuance a second offer is filed correctly describing the same lands, the lease must be cancelled to the extent of the conflict in the two offers.

Sam E. Jones, 45 IEIA 208 (Jan. 30, 1980)

Lands within a proposed addition to the National Desert Wildlife Range are not subject to noncompetitive oil and gas leasing because the proposed withdrawal, if effective, would preclude oil and gas leasing, the same as the existing withdrawal.

Tucker & Snyder Exploration, Inc., 45 IEIA 248 (Feb. 4, 1980)

Noncompetitive oil and gas leases extended beyond their primary term pursuant to 43 CFR 3107.4-3 expire by operation of law at the end of the extension unless one of the statutory grounds for extension is established.

Duncan Miller, 46 IBLA 285 (Mar. 27, 1980)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), expressly precludes leasing in national parks and national monuments. Therefore, the Department of the Interior has no authority to issue an oil and gas lease for lands in the Death Valley National Monument and an offer to lease land within the monument must be rejected.

Fred R., Anna R., and Kristine A. Cerminaro, 46 IBLA 301 (Mar. 31, 1980)

Where the offeror designated on a drawing entry card (DEC) is "Energy Investment Co.," allegedly a sole proprietorship, but the DEC is signed by an individual, who states that he intended to file as an individual, the lease offer is properly rejected because under 30 U.S.C. § 181 (1976), a sole proprietorship is not a qualified offeror and the offer, as an individual's offer, has not been properly executed pursuant to the instructions on the DEC.

E. J. Haugen, 47 IBLA 109 (Apr. 28, 1980)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on environmental analysis reports for the Uinta National Forest, special protective stipulations are not unreasonable, *per se*.

Diane B. Katz, 47 IBLA 177 (May 7, 1980)

Where a question of fact exists as to when accreted land was formed in front of a patented upland lot along the Yellowstone River and whether title to the accreted land is in the United States and, therefore, subject to oil and gas leasing, a hearing may be ordered by this Board pursuant to 43 CFR 4.415.

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

Eldin L. R. Johnson, Marilyn Johnson, 47 IBLA 366 (May 21, 1980)

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Vernon and Rita Benson, 48 IBLA 64 (May 29, 1980)

Where on appeal from rejection of a first-drawn simultaneous oil and gas lease offer, it is alleged that (1) the offer signed by Katherine H. Dunlap was actually submitted on behalf of Charles L. Dunlap whose name appears on the front of the drawing entry card, (2) the front does not show the last name, first name, and middle initial of Katherine Dunlap as offeror, and (3) Charles Dunlap did not submit the information required under 43 CFR 3102.7, the offer will be deemed not fully executed and must be rejected under 43 CFR 3112.2-1(a).

Charles L. Dunlap, 48 IBLA 136 (May 30, 1980)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by ELM that the rental due is \$1,863, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for only \$1,836 within the time required, but fails to submit the \$27 deficiency within the allowed time.

Edward Goodran, 48 IBLA 152 (June 9, 1980)

Under 30 U.S.C. § 188(b) (1976), an oil and gas lease issued after Aug. 21, 1935, under the provisions of 30 U.S.C. § 226 (1976), is subject to cancellation by the Secretary for lease violation unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. A lease known to contain such deposits is subject to cancellation in accordance with 30 U.S.C. § 184(h) (1) (1976), which requires a proceeding in Federal district court instituted by the Attorney General.

Naartex Consulting Corp., 48 IBLA 166 (June 9, 1980)

Sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), is not applicable to on-lease oil and gas production facilities which are included in a surface use and operations plan, and which are authorized by the approval of an application to conduct leasehold operations or construction activities.

Sec. 29 of the Mineral Leasing Act of 1920, 30 U.S.C. § 186 (1976), has consistently been interpreted as not providing authority separate from sec. 28 of the Mineral Leasing Act, 30 U.S.C. § 185 (1976), for oil and gas pipeline rights-of-way. Instead, it reserves to the United States the right to allow other rights-of-way or to lease other minerals on Federal land already leased for the extraction of one mineral, and allows the reservation of the right to dispose of the surface of land leased for mineral extraction "insofar as said surface is not necessary to the use of the lessee in extracting and removing deposits thereon."

The Secretary has broad power to regulate all on-lease activities by oil and gas lessees and operators pursuant to the conditions contained in oil and gas leases and his general regulatory authority under the Mineral Leasing Act. The procedures for regulating activities on oil and gas leases, established under Secretarial Order 2948 and the BLM-USGS Cooperative Procedures Agreement implementing that order, reserve to the Department the authority to protect the United States legal interests in the property. The Secretary has broad discretion either to continue this procedure, or to substitute any other delegation of his authority and any other reasonable regulatory procedure which he concludes would equally protect the United States interests.

All facilities related to an oil and gas lease which are located on Federal land outside the lease, regardless of their nature, may be constructed only after appropriate rights-of-way have been granted. Similarly, on-lease oil and gas transportation facilities and on-lease commercial facilities require rights-of-way. Depending on the nature of the facility, the right-of-way would be granted pursuant to either sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), or Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976).

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.L. 291

OIL AND GAS LEASES--ContinuedGENERALLY--Continued

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis in evaluating a lease bid.

Where, following remand because the record fails to disclose a rational basis for rejection of the high bid at a competitive oil and gas sale, the Geological Survey supplies the factual basis and a reasoned analysis supporting the conclusion that the bid is inadequate, BLM may so conclude and properly reject the bid.

Ojai Oil Co., 49 IBLA 33 (July 21, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental is due within 15 days from the receipt of notice that such payment is due, the offer will be disqualified under 43 CFR 3112.4-1 when the rental is not received in the proper office within 15 days from the receipt of notice that such payment is due.

Where payment must be accomplished within a specific number of days from receipt of notice, that number includes holidays and weekends which occur in the interim unless it is provided otherwise.

Gordon E. Jacober, 49 IBLA 91 (July 22, 1980)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease for an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days of receipt of notice that such payment is due.

Earl F. Hartley, 49 IBLA 140 (July 30, 1980)

A determination by the Geological Survey that lands are within an undefined known geologic structure will not be disturbed in the absence of a clear showing that the determination was improperly made.

CO2-In-Action, Inc., 50 IBLA 54 (Sept. 15, 1980)

When land has previously been included in a lease that has been canceled, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system provided under 43 CFR 3112.

David A. Provinse, 50 IBLA 271 (Oct. 6, 1980)

It is proper for the Bureau of Land Management to reject and over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law at the end of its primary term, because under 43 CFR 3112.1-1 land in an expired lease is subject to the filing of new lease offers only in accordance with simultaneous filing procedures.

Martha M. Findeiss, 50 IBLA 359 (Oct. 16, 1980)

OIL AND GAS LEASES--ContinuedGENERALLY--Continued

Although under the Departmental regulations a competitive bidder in an oil and gas lease sale, must, where there is another party in interest, submit the signed statements required by 43 CFR 3102.7, failure to comply with the regulation does not require rejection of the bid. This result follows because in noncompetitive offerings the critical element is determining the first qualified offeror. For competitive bidding, the amount of the bid replaces priority of filing as the dominant factor.

Black Hawk Resources Corp., 50 IEIA 399 (Oct. 24, 1980) 87 I.L. 497

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

A noncompetitive oil and gas offer to lease must be rejected where either before or after the filing of the offer and prior to the time of the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field.

James Muslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

Where ELM incorporates by reference a Geological Survey memorandum into its decision rejecting a competitive oil and gas lease offer and where such memorandum was the principal basis on which the decision rejecting the offer was made, the memorandum must be made available to the offeror.

Southern Union Exploration Co., 51 IEIA 89 (Nov. 5, 1980)

In the event that some of the land applied for in an oil and gas lease offer was unavailable, the applicant was entitled to a refund of excess rental paid, and failure of ELM to return the excess rental to the offeror after the lease issuance and prior to the next annual rental being due and payable does not prevent the lease from terminating by operation of law.

Wilfred Plowis, 51 IBLA 125 (Nov. 20, 1980)

Where ELM sends by certified mail a notice to an offeror at his record address that he must file a certificate as to his qualification to hold an oil and gas lease, and the letter is returned to ELM marked "Not Deliverable as Addressed, Unable to Forward," and it is established that nondelivery was due to post office error, the appellant will not be considered to have received notice, and the rejection of the lease offer will be set aside.

Erooms Griggs, 51 IEIA 232 (Dec. 15, 1980) 87 I.L. 612

ACQUIRED LANDS LEASES

If acquired lands sought for oil and gas leasing have been surveyed under the rectangular system of public land surveys, and their description can be conformed to that system, the lands must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner.

The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the offeror, and any difficulties in ascertaining a proper metes and bounds description do not preclude the requirement that such lands be correctly described.

A description of land applied for in an oil and gas lease offer for acquired lands is proper so long as it meets the requirements of the applicable regulation whether it includes some land not available for lease or omits some that is.

Where an offer for a noncompetitive oil and gas lease for acquired lands contains a defective description of the lands sought and prior to lease issuance a second offer is filed correctly describing the same lands, the lease must be cancelled to the extent of the conflict in the two offers.

Sam E. Jones, 45 IBLA 208 (Jan. 30, 1980)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Arthur E. Weinhardt and Irwin Rubenstein, 46 IBLA 27 (Feb. 20, 1980)

Before an oil and gas lease for Federal acquired lands can issue, the consent of the agency administering the surface is required by statute, and an applicant for such a lease must execute any special stipulations required by the administering agency as a condition to the giving of its consent. In such cases the Department of the Interior has no jurisdiction to waive execution of the special stipulations or to alter the terms thereof.

Thomas Connell, 46 IBLA 331 (Apr. 4, 1980)

APPLICATIONS

Generally

Where a simultaneous noncompetitive oil and gas lease offer is filed by an applicant whose address of record is in Oklahoma City, Oklahoma, and who writes the word "Oklahoma" on the line on the drawing entry card (DEC) designated by preprinted word as "City" and incorporates the preprinted word "City" as part of this address, it is improper to reject the DEC as not being fully executed.

David F. Owen, 45 IBLA 26 (Jan. 14, 1980)

David F. Owen, 46 IBLA 263 (Mar. 27, 1980)

When an oil and gas lessee submits the amount of rental stated in a bill rendered by an authorized officer and the amount is found to be in error resulting in a deficiency, generally such lease shall not have automatically terminated for failure to pay the annual

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

rental timely and new offers to lease the lands must be rejected.

Lucinda E. Pogggs, 45 IBLA 60 (Jan. 14, 1980)

A drawing entry card which is not dated in the space provided on the card is not fully executed as required by 43 CFR 3112.2-1, and is properly rejected.

John I. Messinger, 45 IBLA 62 (Jan. 17, 1980)

An undated simultaneous oil and gas drawing entry card is properly rejected for noncompliance with 43 CFR 3112.2-1(a) which requires that the card be "fully executed."

Margaret H. Wygocki, 45 IBLA 79 (Jan. 17, 1980)

Where an offeror who suffers from an arthritic condition which restricts his ability to write allows his secretary to sign his name for him on a drawing entry card, and where the secretary exercises no authority to do anything with the card other than as specifically directed by him, the secretary is an amanuensis and not an agent, so that the agency statements prescribed by 43 CFR 3102.6-1(a) are not required.

W. H. Brown, 45 IBLA 81 (Jan. 17, 1980)

It is proper to reject a drawing entry card where the offeror affixes his name to the front of the card in disregard of the instructions instead of inserting it in the appropriate spaces on the card in the order specified thereon (last name, first name, middle initial).

L. E. Diefenderfer, 45 IBLA 108 (Jan. 17, 1980)

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

Land included in an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an offer filed for such land must be rejected.

David A. Province, 45 IBLA 111 (Jan. 23, 1980)

An entry card in a simultaneous oil and gas lease drawing is not to be rejected where the required information is clearly and legibly printed on the face of the card and the only potential defect is the misspelling of a word, where the misspelling does not hinder the processing of the offer.

David F. Owen, 45 IBLA 206 (Jan. 30, 1980)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is dated more than 10 days prior to the beginning of the filing period.

George L. Iahusen, 45 IBLA 310 (Feb. 6, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

"Signed and fully executed." The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) includes the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Under 43 CFR 3102.6-1(a) (2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding.

Elizabeth McClellan, 45 IELA 342 (Feb. 7, 1980)

43 CFR 3112.2-1(a) requires that the simultaneous oil and gas lease drawing entry card be "signed and fully executed." Strict compliance with the regulation is required to enable the Bureau of Land Management State Offices to administer the oil and gas leasing program efficiently and accurately. However, this does not mandate rejection of a card showing an initial in the blank space for a first name, provided the offeror can be identified from the information given and the card is signed in the same manner.

Kathleen A. Rubenstein, 46 IBLA 30 (Feb. 20, 1980)

The Bureau of Land Management properly rejects an oil and gas lease offer for land patented in 1874 under the placer mining laws.

Republic Oil and Mining Co., 46 IBLA 120 (Feb. 29, 1980)

An oil and gas lease offer is properly rejected, where an official of the bank on which the offeror's check to cover the filing fee was drawn, corroborates that the check was uncollectible.

Charles A. Mattison, 46 IELA 130 (Mar. 19, 1980)

Where a drawing entry card sets out the names of two applicants but one applicant fails to sign the card, the card is not in compliance with 43 CFR 3112.2-1(a) which requires that the card be "fully executed," and the lease offer is properly rejected.

Rose E. Carrington, Richard W. Carrington, 46 IBLA 149 (Mar. 19, 1980)

The Secretary of the Interior has the discretionary authority to refuse to lease public land for oil and gas where leasing would not be in the public interest, even though the land applied for is not withdrawn from operation of the Mineral Leasing Act. The refusal to lease must be supported by facts of record that the lease would not be in the public interest because it is incompatible with uses of the land which are worthy of preservation or would otherwise be undesirable.

W. E. Haley, 46 IBLA 151 (Mar. 19, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by corporate qualification papers or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.4-1. Such omissions cannot be cured after the drawing.

Where a corporate simultaneous oil and gas lease offeror alleges no facts which could disprove its failure to comply with 43 CFR 3102.4-1, no hearing will be granted as requested.

Cheyenne Resources, Inc., 46 IELA 277 (Mar. 27, 1980)
87 I.L. 110

The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), expressly precludes leasing in national parks and national monuments. Therefore, the Department of the Interior has no authority to issue an oil and gas lease for lands in the Death Valley National Monument and an offer to lease land within the monument must be rejected.

Fred R., Anna R., and Kristine A. Cerminaro, 46 IELA 301 (Mar. 31, 1980)

A sight draft is an acceptable form of remittance to satisfy 43 CFR 3112.2-1(a) (1) governing filing fees for simultaneous oil and gas lease offers.

William F. Jeffers, Jr., 46 IBLA 322 (Apr. 4, 1980)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all non-competitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Before an oil and gas lease for Federal acquired lands can issue, the consent of the agency administering the surface is required by statute, and an applicant for such a lease must execute any special stipulations required by the administering agency as a condition to the giving of its consent. In such cases the Department of the Interior has no jurisdiction to waive execution of the special stipulations or to alter the terms thereof.

Thomas Connell, 46 IELA 331 (Apr. 4, 1980)

It is proper to reject a drawing entry card lease offer, given first priority at a drawing, where the offeror's name is affixed by a rubber stamp with initials first, rather than last name first, outside the appropriate boxes.

E. R. Cantine, 46 IELA 382 (Apr. 10, 1980)

S. A. Cantine, R. C. Diefenderfer, 47 IELA 7 (Apr. 10, 1980)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

An oil and gas lease offer is properly rejected where the offeror's check to cover the filing fee is dishonored by the bank because of insufficient funds in the account on which the check is drawn.

Mary E. Cummings, 47 IBLA 10 (Apr. 10, 1980)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and where the applicant omits from his address the state and zip code, the lease offer is properly rejected.

Rick C. Wright, 47 IBLA 45 (Apr. 11, 1980)

It is improper to reject a drawing entry card lease offer, given first priority at a drawing where the offeror, a corporation, inserts its corporate name in the appropriate spaces on the drawing entry card in the order of last name first, and first name last in accordance with the instruction on the card. Any reversals of corporate names henceforth may invalidate the offers so involved.

Mar-Win Development Co., 47 IBLA 140 (Apr. 30, 1980)

Oil and gas lease offers embracing lands withdrawn specifically from oil and gas leasing and by Public Land Order No. 674, of Oct. 7, 1950, reserved for an agency of the Department of Defense, are properly rejected. Lands declared surplus are not subject to leasing by this Department.

Edward C. Shepardon, 47 IBLA 223 (May 13, 1980)

When six offerors sign a drawing entry card (DEC) in two signature boxes, four in one box and two in the other, and the same date of signing is entered in each of the two appropriate boxes on the DEC for the date, adjacent to the two signature boxes, so that it is evident that the date applies equally to all six signatures on the card, the failure to enter four other dates on the offer is not grounds for rejection of the DEC.

Carlyle Kammerer, Jr., et al., 47 IBLA 246 (May 13, 1980)

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

Eldin L. R. Johnson, Marilyn Johnson, 47 IELA 366 (May 21, 1980)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and where it subsequently issues a second conflicting lease for the same lands to the senior offeror, its decision cancelling the lease issued to the senior offeror will be vacated, as the statute governing oil and gas leasing of ncn-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successors in interest have not been joined to BLM's proceedings nor named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

to the junior offer should not be cancelled insofar as they conflict with the senior, legally superior offer.

Even though created by a lease issued to a junior noncompetitive over-the-counter oil and gas lease offer in derogation of the superior rights to the same land of a senior offeror, oil and gas lease rights based on the junior offer may not be cancelled where they have been acquired by a bona fide purchaser, and, where assignees of such lease rights have not had the opportunity to show that they acquired and hold these rights as bona fide purchasers, the matter will be remanded to BLM to allow them to so show, and to allow the senior offeror to show to the contrary.

George F. Wolter, Jr., 47 IELA 396 (May 22, 1980)

A noncompetitive oil and gas lease offer for lands patented under a railroad land grant must be rejected because the United States does not own the mineral deposits in the lands.

Liane E. Katz, 48 IELA 118 (May 30, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is \$1,863, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for only \$1,836 within the time required, but fails to submit the \$27 deficiency within the allowed time.

Edward Goodman, 48 IELA 152 (June 9, 1980)

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(t).

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

Geosearch, Inc., 48 IELA 190 (June 9, 1980)

A drawing entry card lease offer submitted on an old edition of Form 3112-1 should not be rejected solely for failure to complete the DEC where the omission is of information (the name of the state which is the location of the lands sought) not required on the current edition of Form 3112-1.

William E. Hathorn, 48 IELA 349 (July 11, 1980)

An entry card in a simultaneous oil and gas lease drawing need not be rejected under 43 CFR 3112.2-1(a) where the offeror's name and address are affixed with a rubber stamp outside the preprinted boxes but are

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

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otherwise legible and in the designated manner on the face of the card.

Bessie B. Landis, Kristie R. Cobb, 48 IBLA 354 (July 11, 1980)

Wayne E. DeBord, 50 IBLA 216 (Sept. 30, 1980)
87 I.D. 465

A drawing entry card oil and gas lease offer is properly rejected where the card bears a date more than 10 days prior to the beginning of the filing period.

William J. Barrett, 49 IBLA 30 (July 21, 1980)

In deciding a case where the name of the offeror trustee is affixed to the oil and gas drawing entry card in the wrong order, instead of being inserted in the appropriate spaces of the card in the order last name, first name, middle initial, the Board will conform to the Court of Appeals' decision in Brick v. Andrus, Civil No. 79-1766 (D.C. Cir. June 6, 1980), and reverse the rejection of the lease offer for this reason.

Leland A. Hodges (Trustee), 49 IBLA 50 (July 21, 1980)

It is not proper to reject a drawing entry card lease offer, given first priority at a drawing, where the only deficiency is that the offeror did not insert his name in the order set forth on the card, i.e., last name, first name, middle initial; but rather inserted his name in this order: first name, middle initial, last name.

Robert R. Furman, 49 IBLA 64 (July 21, 1980)

Use of a common address is not grounds for rejection of a successful simultaneous oil and gas lease offer.

Where an oil and gas lease offer which prima facie met the requirements of the regulations is rejected by the Bureau of Land Management because the offeror did not satisfactorily complete an inquiry sent to the offeror and on appeal the information is submitted together with an explanation, the offer need not be rejected.

Betty C. Cramer, Arthur E. Rose, 49 IBLA 66 (July 22, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental is due within 15 days from the receipt of notice that such payment is due, the offer will be disqualified under 43 CFR 3112.4-1 when the rental is not received in the proper office within 15 days from the receipt of notice that such payment is due.

Where payment must be accomplished within a specific number of days from receipt of notice, that number includes holidays and weekends which occur in the interim unless it is provided otherwise.

Gordon E. Jacober, 49 IBLA 91 (July 22, 1980)

OIL AND GAS LEASES--Continued

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43 CFR 3112.2-1(a) requires that the simultaneous oil and gas lease drawing entry card be "signed and fully executed." Strict compliance with the regulation is required to enable the Bureau of Land Management State Offices to administer the oil and gas leasing program efficiently and accurately. However, this does not mandate rejection of a card where the first drawn applicant has placed the abbreviation for junior, "Jr." above the space provided for his middle initial, separated it with a comma, and lined through that phrase on the card, provided no ambiguity exists as to the identity of the applicant.

The exclusion from the drawing of oil and gas drawing entry cards for trivial and inconsequential alterations which do not affect the appearance or feel of the cards in any significant way and which obviously were not intended to adversely affect the integrity of the drawing is arbitrary and capricious.

David F. Owen, 49 IBLA 131 (July 28, 1980)

A drawing entry card lease offer submitted on an authorized, though superseded, version of Form 3112-1 should not be rejected solely for failure to complete the DEC where the omission is of information (the name of the state which is the location of the lands sought) not required on the current printing of the form.

William F. Hathorn, I. F. Forter, 49 IBLA 241 (Aug. 18, 1980)

When an offeror prints her name on the front of a drawing entry card oil and gas lease offer as "Reagan, Wavis K.," and signs her name on the back of the card as "Kay Reagan," the card may not be rejected because she violated no regulation by signing the offer in that manner, and she properly followed instructions on the face of the card by inserting her full name, last name first, then first name and initial.

Clarisse G. Percell, 49 IBLA 275 (Aug. 18, 1980)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by ELM as available for simultaneous noncompetitive offers.

Jack E. Lea, 49 IBLA 358 (Aug. 29, 1980)

Under 43 CFR 3102.6-1(a) (2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, giving full details of the agreement or understanding if it is a verbal one, and a copy of any written agreement or understanding. The regulation requirement is not met where statements are filed by the offeror and an agent with whom it has not actually contracted, but with whom the offeror's primary agent contracted to perform leasing services. To show the necessary agency and contractual authority, the complete chain of agency-contract authority and relationships must be shown when the offer is filed.

Cliff Mezey, 50 IBLA 157 (Sept. 30, 1980)

OIL AND GAS LEASES--Continued

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Where a BLM office is not satisfied that an oil and gas lease offer drawn with first priority is in full compliance with the regulations, it should require the offeror to provide such information in support of his offer as will resolve the question, and should the offeror fail to respond fully within a reasonably prescribed time it is appropriate to reject that offer and consider the offer which has been drawn with next priority.

Lorenz K. Ayers (Appellant), W. O. Pettit, Jr. (Appellee), 50 IBLA 240 (Sept. 30, 1980)

When land has previously been included in a lease that has been canceled, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system provided under 43 CFR 3112.

David A. Province, 50 IBLA 271 (Oct. 6, 1980)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the ELM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Where an oil and gas leasing service has an interest in the offers of its clients, and where it files offers for multiple clients on one particular parcel, the service has increased the probability of its success in the drawing, and all of its clients' offers for that parcel must be rejected under 43 CFR 3112.5-2.

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by a State Office of BLM, of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM State Office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Donald W. Cover, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

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Where the Bureau of Land Management requests within 30 days the execution of special stipulations prepared by the Forest Service for acquired lands embraced in a noncompetitive oil and gas lease offer, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days.

J. Thomas Lewis, 50 IBLA 350 (Oct. 14, 1980)

It is proper for the Bureau of Land Management to reject and over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law at the end of its primary term, because under 43 CFR 3112.1-1 land in an expired lease is subject to the filing of new lease offers only in accordance with simultaneous filing procedures.

Martha F. Findeiss, 50 IBLA 359 (Oct. 16, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The fact that the noncompetitive offeror followed all of the applicable rules and regulations in making the offer does not vitiate this conclusion.

Pauline C. Letsack, 50 IBLA 361 (Oct. 16, 1980)

Where lands are withheld from leasing or have not been made subject to the operation of mineral leasing laws, applications must be rejected and cannot be held pending possible future availability of the lands. 43 CFR 2091.1.

James R. Learned et al., 50 IBLA 416 (Oct. 24, 1980)

A noncompetitive oil and gas offer to lease must be rejected where either before or after the filing of the offer and prior to the time of the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field.

James Muslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings, unsupported by facts, do not warrant rejection.

Bureau of Land Management decisions rejecting oil and gas lease offers will be set aside and the cases remanded for further consideration where the only basis for the decisions was possible future harm to desert tortoises which are currently under consideration to determine if they should be placed on the endangered species list, and the record demonstrates the decline of the species is due to other reasons, and there has been no determination whether other measures, including protective stipulations in oil and gas leases, could be

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

taken to protect the tortoises while permitting oil and gas exploration and development.

Tucker and Snyder Exploration Co., Inc., et al., 51 IBLA 35 (Oct. 30, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Ervin Wheeler, Toni Shugart, Kathy Coffee, 51 IBLA 66 (Oct. 31, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field. The fact that the noncompetitive offeror followed all of the applicable rules and regulations in making his offer does not vitiate this conclusion.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Donnie R. Clouse, 51 IBLA 221 (Dec. 10, 1980)

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer per 43 CFR 3112.5-2.

Petroleum Shares, Inc., 51 IBLA 246 (Dec. 15, 1980)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the ELM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedGenerally--Continued

the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Where an oil and gas leasing service has an interest in the offers of its clients, and where it files offers for multiple clients on one particular parcel, the service has increased the probability of its success in the drawing, and all of its clients' offers for that parcel must be rejected under 43 CFR 3112.5-2.

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by a State Office of ELM, of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the ELM State Office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

The Department has authority to cancel leases administratively where the lease was granted pursuant to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the time of filing, the existence of all parties holding interests in the offer.

The fact that an entitlement to share in the proceeds from the sale of a lease is contingent upon the lease being sold does not mean that this entitlement is not an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

ELM properly refuses to recognize the asserted interest of a party in a lease offer where no application for ELM's approval of a transfer of any interest in this offer and lease (if issued) has ever been filed, and ELM properly determines to issue the lease, if appropriate, to the offeror and not to the asserted interest holder.

An amended regulation restricting transfer of oil and gas interests governs where an offeror has not sought approval of a transfer of a pending offer to lease and lease (if issued) prior to June 16, 1980, the effective date of the amendment. Accordingly, under this regulation, ELM cannot consider any application for approval of such a transfer until after issuance of the lease.

L. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

Attorneys-in-Fact or Agents

Under 43 CFR 3102.6-1(a)(2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding.

Elizabeth McClellan, 45 IBLA 342 (Feb. 7, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Where a drawing entry card offer to lease is prepared by an agent, that is, a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the latter signed his principal's name or his own name as his principal's agent, and regardless of whether the signature was applied manually or mechanically.

Hyman Winik, 46 IBLA 292 (Mar. 31, 1980)

Elizabeth Murase, 47 IBLA 115 (Apr. 28, 1980)

Where on an oil and gas lease drawing entry card the offerors' signatures were stamped by the offerors themselves, no agency statements are required under 43 CFR 3102.6-1 (a) (2).

Federal Resources Corp., 48 IBLA 138 (May 30, 1980)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

Debra F. Howard, 48 IBLA 187 (June 9, 1980)

Henry A. Alker, 49 IBLA 118 (July 28, 1980)

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5 (b).

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

Geosearch, Inc., 48 IBLA 190 (June 9, 1980)

Where a corporation's statement of corporate qualifications on file in BLM shows that an individual identified only by name, but not by title or position, has a limited power to act on behalf of the corporation with reference to Federal oil and gas leases, simultaneous offers filed by him were properly rejected for the reason that they were not accompanied by the separate statements required when such offers are filed by an agent or attorney in fact, and this

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

omission may not be "cured" post hoc by the corporation's allegation that he is its general manager and considered an officer.

Viking Resources Corp., 48 IBLA 338 (July 3, 1980)

Under 43 CFR 3102.6-1 (a) (2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, giving full details of the agreement or understanding if it is a verbal one, and a copy of any written agreement or understanding. The regulation requirement is not met where statements are filed by the offeror and an agent with whom it has not actually contracted, but with whom the offeror's primary agent contracted to perform leasing services. To show the necessary agency and contractual authority, the complete chain of agency-contract authority and relationships must be shown when the offer is filed.

Cliff Mezey, 50 IBLA 157 (Sept. 30, 1980)

Drawings

A drawing entry card which is not dated in the space provided on the card is not fully executed as required by 43 CFR 3112.2-1, and is properly rejected.

John L. Messinger, 45 IBLA 62 (Jan. 17, 1980)

An undated simultaneous oil and gas drawing entry card is properly rejected for noncompliance with 43 CFR 3112.2-1 (a) which requires that the card be "fully executed."

Margaret H. Wysocki, 45 IBLA 79 (Jan. 17, 1980)

Where an offeror who suffers from an arthritic condition which restricts his ability to write allows his secretary to sign his name for him on a drawing entry card, and where the secretary exercises no authority to do anything with the card other than as specifically directed by him, the secretary is an amanuensis and not an agent, so that the agency statements prescribed by 43 CFR 3102.6-1 (a) are not required.

W. H. Brown, 45 IBLA 81 (Jan. 17, 1980)

It is proper to reject a drawing entry card where the offeror affixes his name to the front of the card in disregard of the instructions instead of inserting it in the appropriate spaces on the card in the order specified therein (last name, first name, middle initial).

L. E. Diefenderfer, 45 IBLA 108 (Jan. 17, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where on appeal from rejection of a simultaneous oil and gas lease offer, it is alleged that the offer designated "Milner Productions" was actually submitted on behalf of a sole proprietorship, and the drawing entry card does not show the last name, first name, and middle initial of an individual offeror, the lease offeror will be deemed unqualified under 30 U.S.C. § 181 (1976), and the offer not fully executed under 43 CFR 3112.2-1(a).

Tom Milner, 45 IBLA 119 (Jan. 23, 1980)

An entry card in a simultaneous oil and gas lease drawing is not to be rejected where the required information is clearly and legibly printed on the face of the card and the only potential defect is the misspelling of a word, where the misspelling does not hinder the processing of the offer.

David F. Owen, 45 IBLA 206 (Jan. 30, 1980)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is dated more than 10 days prior to the beginning of the filing period.

George L. Lahusen, 45 IBLA 310 (Feb. 6, 1980)

Where a majority of the Board of Land Appeals has ruled that an agreement between a filing service company and its clientele create no interest in the company and its president which would violate the regulations requiring disclosure of other interests in the lease offers and which preclude multiple filings in simultaneous filing-drawing procedures and that the president's filing an offer in his own name competing with the clientele of the company does not violate the regulations, a case involving similar factual and legal issues will follow the Board's majority position.

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing will be denied as well as his request for further suspension of the case.

Jack Zuckerman, 45 IBLA 337 (Feb. 7, 1980)

"Signed and fully executed." The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) includes the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Under 43 CFR 3102.6-1(a) (2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding.

Elizabeth McClellan, 45 IBLA 342 (Feb. 7, 1980)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and the right of the next drawee to receive first consideration attaches eo instante.

Zenith S. Merritt, 46 IBLA 24 (Feb. 20, 1980)

43 CFR 3112.2-1(a) requires that the simultaneous oil and gas lease drawing entry card be "signed and fully executed." Strict compliance with the regulation is required to enable the Bureau of Land Management State Offices to administer the oil and gas leasing program efficiently and accurately. However, this does not mandate rejection of a card showing an initial in the blank space for a first name, provided the offeror can be identified from the information given and the card is signed in the same manner.

Kathleen A. Fuhenstein, 46 IBLA 30 (Feb. 20, 1980)

Where officers of a corporation file applications for leases for parcels of land in a simultaneous drawing and are the successful offerors and where the corporation has not filed applications in competition with these corporate officers for the same parcels in the same drawing, these offers need not be rejected as prohibited multiple filings under 43 CFR 3112.5-2, when the corporate officers make an adequate showing that their oil and gas leasing activities were both authorized by the corporation and unaffected by the corporate relationship.

E. M. Dowdle, Tom Boston, Paul Creson, 46 IBLA 83 (Feb. 28, 1980)

An oil and gas lease offer is properly rejected, where an official of the bank on which the offeror's check to cover the filing fee was drawn, certifies that the check was uncollectible.

Charles A. Mattison, 46 IBLA 130 (Mar. 19, 1980)

Where a drawing entry card sets out the names of two applicants but one applicant fails to sign the card, the card is not in compliance with 43 CFR 3112.2-1(a) which requires that the card be "fully executed," and the lease offer is properly rejected.

Rose E. Carrington, Richard W. Carrington, 46 IBLA 149 (Mar. 19, 1980)

Where a drawing entry card offer to lease is prepared by an agent, that is, a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the latter signed his principal's

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

name or his own name as his principal's agent, and regardless of whether the signature was applied manually or mechanically.

Hyman Winik, 46 IBLA 292 (Mar. 31, 1980)

Elizabeth Murase, 47 IBLA 115 (Apr. 28, 1980)

It is proper to reject a drawing entry card lease offer, given first priority at a drawing, where the offeror's name is affixed by a rubber stamp with initials first, rather than last name first, outside the appropriate boxes.

D. R. Cantine, 46 IBLA 382 (Apr. 10, 1980)

S. A. Cantine, R. C. Diefenderfer, 47 IBLA 7 (Apr. 10, 1980)

An oil and gas lease offer is properly rejected where the offeror's check to cover the filing fee is dishonored by the bank because of insufficient funds in the account on which the check is drawn.

Mary E. Cummings, 47 IBLA 10 (Apr. 10, 1980)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and where the applicant omits from his address the state and zip code, the lease offer is properly rejected.

Rick C. Wright, 47 IBLA 45 (Apr. 11, 1980)

Where the offeror designated on a drawing entry card (DEC) is "Energy Investment Co.," allegedly a sole proprietorship, but the DEC is signed by an individual, who states that he intended to file as an individual, the lease offer is properly rejected because under 30 U.S.C. § 181 (1976), a sole proprietorship is not a qualified offeror and the offer, as an individual's offer, has not been properly executed pursuant to the instructions on the DEC.

E. J. Haugen, 47 IBLA 109 (Apr. 28, 1980)

It is improper to reject a drawing entry card lease offer, given first priority at a drawing where the offeror, a corporation, inserts its corporate name in the appropriate spaces on the drawing entry card in the order of last name first, and first name last in accordance with the instruction on the card. Any reversals of corporate names henceforth may invalidate the offers so involved.

Mar-Win Development Co., 47 IBLA 140 (Apr. 30, 1980)

When six offerors sign a drawing entry card (DEC) in two signature boxes, four in one box and two in the other, and the same date of signing is entered in each of the two appropriate boxes on the DEC for the date, adjacent to the two signature boxes, so that it is evident that the date applies equally to all six signatures on the card, the failure to enter four other dates on the offer is not grounds for rejection of the DEC.

Carlyle Kammerer, Jr., et al., 47 IBLA 246 (May 13, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A protest against the issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should have been disqualified, or that the lease should have been cancelled.

Geosearch, Inc., 48 IBLA 20 (May 27, 1980)

Geosearch, Inc., 50 IBLA 347 (Oct. 14, 1980)

A protest against the issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should have been disqualified, that assignees were not bona fide purchasers or that the leases should be cancelled.

Geosearch, Inc., 48 IBLA 51 (May 29, 1980)

Protests against the issuance of oil and gas leases are properly dismissed where the protestant fails to show with competent evidence that there have been violations of the leasing regulations, that the successful drawees should have been disqualified, or that the leases should have been cancelled.

Geosearch, Inc., 48 IBLA 76 (May 29, 1980)

Geosearch, Inc., 48 IBLA 333 (July 3, 1980)

Geosearch, Inc., 49 IBLA 19 (July 15, 1980)

Where on appeal from rejection of a first-drawn simultaneous oil and gas lease offer, it is alleged that (1) the offer signed by Katherine H. Dunlap was actually submitted on behalf of Charles L. Dunlap whose name appears on the front of the drawing entry card, (2) the front does not show the last name, first name, and middle initial of Katherine Dunlap as offeror, and (3) Charles Dunlap did not submit the information required under 43 CFR 3102.7, the offer will be deemed not fully executed and must be rejected under 43 CFR 3112.2-1(a).

Charles L. Dunlap, 48 IBLA 136 (May 30, 1980)

Where on an oil and gas lease drawing entry card the offerors' signatures were stamped by the offerors themselves, no agency statements are required under 43 CFR 3102.6-1(a) (2).

Federal Resources Corp., 48 IBLA 138 (May 30, 1980)

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

Geosearch, Inc., 48 IBLA 190 (June 9, 1980)

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedDrawings--Continued

Where a corporation's statement of corporate qualifications on file in BLM shows that an individual identified only by name, but not by title or position, has a limited power to act on behalf of the corporation with reference to Federal oil and gas leases, simultaneous offers filed by him were properly rejected for the reason that they were not accompanied by the separate statements required when such offers are filed by an agent or attorney in fact, and this omission may not be "cured" post hoc by the corporation's allegation that he is its general manager and considered an officer.

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. A first-drawn drawing entry card oil and gas lease offer signed by an agent but which is not accompanied by the statements required by regulation must be rejected because the offeror is not the first-qualified applicant.

Viking Resources Corp., 48 IBLA 338 (July 3, 1980)

An entry card in a simultaneous oil and gas lease drawing need not be rejected under 43 CFR 3112.2-1(a) where the offeror's name and address are affixed with a rubber stamp outside the preprinted boxes but are otherwise legible and in the designated manner on the face of the card.

Bessie B. Landis, Kristie R. Cobb, 48 IBLA 354 (July 11, 1980)

Where a leasing service company's client wins a Federal oil and gas lease at a drawing in which the leasing service and its officer participate, the mere participation of the company and the officer in the same filing, without anything more to create an interest in them in the client's lease, does not constitute a violation of the regulations which should be charged against the client.

A reference in a letter to the Bureau of Land Management from the winning drawee in a simultaneous oil and gas lease filing to "majority owners" of the lease, by itself is not sufficient to show there were undisclosed parties in interest at the time the offer was filed, but it would ordinarily warrant further investigation. Where a hearing is ordered on other issues to determine if there was a violation of the regulations in the filing, evidence should also be presented on this issue to explain the meaning of the reference and to show whether someone other than the offeror had an interest in the offer at the time it was filed.

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations regarding disclosure of other parties in interest and prohibiting against multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of Eden Capital Corp. and its clientele where there are ambiguities in the complex contract which provides for a preliminary division of lease obligations and proceeds and establishment of a lease escrow fund to protect funds promised to the client if the client exercises an option by which Eden will buy all leases in a particular lease program subscribed to by the client, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients of Eden have given to the terms.

Harry S. Hills, Kenneth E. Roth, 48 IBLA 356 (July 11, 1980)

OIL AND GAS LEASES--ContinuedAFFILIATIONS--ContinuedDrawings--Continued

A drawing entry card oil and gas lease offer is properly rejected where the card bears a date more than 10 days prior to the beginning of the filing period.

William J. Farrett, 49 IEIA 30 (July 21, 1980)

In deciding a case where the name of the offeror trustee is affixed to the oil and gas drawing entry card in the wrong order, instead of being inserted in the appropriate spaces of the card in the order last name, first name, middle initial, the Board will conform to the Court of Appeals' decision in Erick v. Andrus, Civil No. 79-1766 (D.C. Cir. June 6, 1980), and reverse the rejection of the lease offer for this reason.

Ieland A. Hedges, Trustee, 49 IEIA 50 (July 21, 1980)

It is not proper to reject a drawing entry card lease offer, given first priority at a drawing, where the only deficiency is that the offeror did not insert his name in the order set forth on the card, i.e., last name, first name, middle initial; but rather inserted his name in this order: first name, middle initial, last name.

Robert R. Furman, 49 IEIA 64 (July 21, 1980)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3112.2-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

Henry A. Alker, 49 IEIA 118 (July 28, 1980)

43 CFR 3112.2-1(a) requires that the simultaneous oil and gas lease drawing entry card be "signed and fully executed." Strict compliance with the regulation is required to enable the Bureau of Land Management State Offices to administer the oil and gas leasing program efficiently and accurately. However, this does not mandate rejection of a card where the first drawn applicant has placed the abbreviation for junior, "Jr." above the space provided for his middle initial, separated it with a comma, and lined through that phrase on the card, provided no ambiguity exists as to the identity of the applicant.

The exclusion from the drawing of oil and gas drawing entry cards for trivial and inconsequential alterations which do not affect the appearance or feel of the cards in any significant way and which obviously were not intended to adversely affect the integrity of the drawing is arbitrary and capricious.

David F. Owen, 49 IEIA 131 (July 28, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

When an offeror prints her name on the front of a drawing entry card oil and gas lease offer as "Reagan, Wavis K.," and signs her name on the back of the card as "Kay Reagan," the card may not be rejected because she violated no regulation by signing the offer in that manner, and she properly followed instructions on the face of the card by inserting her full name, last name first, then first name and initial.

Clarisse G. Percell, 49 IBLA 275 (Aug. 18, 1980)

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of a leasing service and its clientele where there are ambiguities in the complex contract between them, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients have given to the terms.

Valerie Mellor, Elizabeth R. Drozda, 49 IBLA 303 (Aug. 20, 1980)

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Service Company, a leasing service, and issuance of the lease, shall be suspended pending appropriate action by ELM to determine whether there has been a violation of the regulations requiring disclosure of interests in a lease, when an offer is filed, and prohibiting against the multiple filings of lease offers in a simultaneous filing, arising from the RSC's client referral program whereby client A, for whom RSC files offers, can share in the proceeds of RSC's commission on a sale of client B's oil and gas lease negotiated by RSC if client B was referred to RSC by client A.

Lloyd Chemical Sales, Inc., 49 IBLA 392 (Sept. 5, 1980)

Under 43 CFR 3102.6-1(a) (2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, giving full details of the agreement or understanding if it is a verbal one, and a copy of any written agreement or understanding. The regulation requirement is not met where statements are filed by the offeror and an agent with whom it has not actually contracted, but with whom the offeror's primary agent contracted to perform leasing services. To show the necessary agency and contractual authority, the complete chain of agency-contract authority and relationships must be shown when the offer is filed.

Cliff Mezey, 50 IBLA 157 (Sept. 30, 1980)

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

in each lease offer within the meaning of 43 CFR 3102.7, requiring the disclosure of interested parties.

Where a party to a pooling agreement is authorized to advance funds for filing drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor and receive a consultation fee from the pooled proceeds of the sale or assignment of any lease issued, the filing in a lease drawing for a particular parcel by more than one party to the agreement constitutes a multiple filing in violation of 43 CFR 3112.5-2.

An entry card in a simultaneous oil and gas lease drawing need not be rejected under 43 CFR 3112.2-1(a) where the offeror's name and address are affixed with a rubber stamp outside the preprinted boxes but are otherwise legible on the face of the card.

Wayne E. DeFord, 50 IBLA 216 (Sept. 30, 1980)

87 I.L. 465

Where oil and gas lease applicants contend that ELM wrongly excluded three of their simultaneous offers from a drawing for not paying the filing fees when in fact the fees had accompanied the offers and been deposited by ELM, but fail to provide sufficient evidence of such payments after having been afforded reasonable opportunity to do so, the duties of the ELM officials will be presumed to have been properly discharged.

Cassius C. Ferguson et al., 50 IBLA 231 (Sept. 30, 1980)

Where a ELM office is not satisfied that an oil and gas lease offer drawn with first priority is in full compliance with the regulations, it should require the offeror to provide such information in support of his offer as will resolve the question, and should the offeror fail to respond fully within a reasonably prescribed time it is appropriate to reject that offer and consider the offer which has been drawn with next priority.

Irene K. Ayers (Appellant), W. C. Pettit, Jr. (Appellee), 50 IBLA 240 (Sept. 30, 1980)

Where it appears that there may have been a violation of the disclosure and/or interest regulations (43 CFR 3102.7 and 3112.5-2) asserted by a protest, the adjudication of the appeal stemming from the dismissal of the protest is properly suspended pending appropriate action by ELM to determine whether there has been a violation of these regulations.

Geosearch, Inc., 50 IBLA 409 (Oct. 24, 1980)

Where ELM does not officially reject or return the simultaneous noncompetitive oil and gas lease offers drawn with second and third priority after the issuance of the leases to the first drawees, the second and third drawees retain an interest which must be considered if the leases are cancelled because the first drawees' offers are defective, provided that the leases have not been assigned to bona fide purchasers.

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Service Company, a leasing service, and issuance of the lease, properly is suspended pending appropriate action by ELM to determine whether there has been a violation of the disclosure and interest regulations. ELM will investigate a filing service's relationship with the offeror

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

where it appears that the disclosure and interest regulations may have been violated by a referral program offered by the filing service.

Geosearch, Inc., 51 IBLA 59 (Oct. 31, 1980)

BLM properly applied amended regulations, the effective date for which is June 16, 1980, to a drawing of simultaneous noncompetitive lease offers held in July 1980.

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to cover the \$10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

An applicant is required to submit a filing fee for every ostensible application whether or not it is completed as required under the regulations. Thus, a failure to remit enough money to cover all of the fees due for a group of filings is not excused because one of the filings may not have been properly completed.

Federal Energy Corp., 51 IBLA 144 (Nov. 24, 1980)

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer per 43 CFR 3112.5-2.

Petroleum Shares, Inc., 51 IBLA 246 (Dec. 15, 1980)

Filing

Where the owner of a leasing service has no interest in the offers prepared and submitted by him on behalf of his clientele, an offer on the same parcel filed by the owner in his own name does not constitute a prohibited multiple filing.

Ervin J. Powers, 45 IBLA 186 (Jan. 30, 1980)

Under 43 CFR 3102.6-1(a) (2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding.

Elizabeth McClellan, 45 IBLA 342 (Feb. 7, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

An oil and gas lease offer is properly rejected, where an official of the bank on which the offeror's check to cover the filing fee was drawn, corroborates that the check was uncollectible.

Charles A. Mattison, 46 IBLA 130 (Mar. 19, 1980)

A sight draft is an acceptable form of remittance to satisfy 43 CFR 3112.2-1(a) (1) governing filing fees for simultaneous oil and gas lease offers.

William E. Jeffers, Jr., 46 IBLA 322 (Apr. 4, 1980)

An oil and gas lease offer is properly rejected where the offeror's check to cover the filing fee is dishonored by the bank because of insufficient funds in the account on which the check is drawn.

Mary E. Cummings, 47 IBLA 10 (Apr. 10, 1980)

Where a leasing service company's client wins a Federal oil and gas lease at a drawing in which the leasing service and its officer participate, the mere participation of the company and the officer in the same filing, without anything more to create an interest in them in the client's lease, does not constitute a violation of the regulations which should be charged against the client.

A reference in a letter to the Bureau of Land Management from the winning drawee in a simultaneous oil and gas lease filing to "majority owners" of the lease, by itself is not sufficient to show there were undisclosed parties in interest at the time the offer was filed, but it would ordinarily warrant further investigation. Where a hearing is ordered on other issues to determine if there was a violation of the regulations in the filing, evidence should also be presented on this issue to explain the meaning of the reference and to show whether someone other than the offeror had an interest in the offer at the time it was filed.

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting against multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of Eden Capital Corp. and its clientele where there are ambiguities in the complex contract which provides for a preliminary division of lease obligations and proceeds and establishment of a lease escrow fund to protect funds promised to the client if the client exercises an option by which Eden will buy all leases in a particular lease program subscribed to by the client, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients of Eden have given to the terms.

Harry S. Hills, Kenneth E. Roth, 48 IBLA 356 (July 11, 1980)

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of a leasing service and

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedFiling--Continued

its clientele where there are ambiguities in the complex contract between them, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients have given to the terms.

Valerie Mellor, Elizabeth R. Drozda, 49 IELA 303 (Aug. 20, 1980)

Under 43 CFR 3102.6-1(a)(2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, giving full details of the agreement or understanding if it is a verbal one, and a copy of any written agreement or understanding. The regulation requirement is not met where statements are filed by the offeror and an agent with whom it has not actually contracted, but with whom the offeror's primary agent contracted to perform leasing services. To show the necessary agency and contractual authority, the complete chain of agency-contract authority and relationships must be shown when the offer is filed.

Cliff Mezey, 50 IBLA 157 (Sept. 30, 1980)

Where an oil and gas leasing service has an interest in the offers of its clients, and where it files offers for multiple clients on one particular parcel, the service has increased the probability of its success in the drawing, and all of its clients' offers for that parcel must be rejected under 43 CFR 3112.5-2.

Donald W. Cover, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents), 50 IBLA 306 (Oct. 14, 1980)

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

BLM properly applied amended regulations, the effective date for which is June 16, 1980, to a drawing of simultaneous noncompetitive lease offers held in July 1980.

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to cover the \$10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

An applicant is required to submit a filing fee for every ostensible application whether or not it is completed as required under the regulations. Thus, a failure to remit enough money to cover all of the fees due for a group of filings is not excused because one of the filings may not have been properly completed.

Federal Energy Corp., 51 IBLA 144 (Nov. 24, 1980)

OIL AND GAS LEASES--ContinuedAFFLICATICNS--Continued640-acre Limitation

"Rule of Approximation." The Department of the Interior will not reject an oil and gas lease offer for public domain lands solely for the reason of the offer being for less than 640 acres where the amount by which the offer is under 640 acres is less than the amount by which the offer would exceed 640 acres by including the smallest adjoining subdivision available for leasing, the offer thereby conforming to the rule of approximation.

James M. Chudnow, 47 IELA 265 (May 13, 1980)

Sole Party in Interest

"Interest." Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of any successful client, strictly at the client's option, in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. The option is no more than a mere hope or expectancy that a client will elect to employ the service as sales agent, so that there is no interest in the lease if issued, which must be disclosed.

Ervin J. Powers, 45 IELA 186 (Jan. 30, 1980)

Where a majority of the Board of Land Appeals has ruled that an agreement between a filing service company and its clientele create no interest in the company and its president which would violate the regulations requiring disclosure of other interests in the lease offers and which preclude multiple filings in simultaneous filing-drawing procedures and that the president's filing an offer in his own name competing with the clientele of the company does not violate the regulations, a case involving similar factual and legal issues will follow the Board's majority position.

Jack Zuckerwan, 45 IBLA 337 (Feb. 7, 1980)

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

Geosearch, Inc., 48 IELA 190 (June 9, 1980)

Where a leasing service company's client wins a Federal oil and gas lease at a drawing in which the leasing service and its officer participate, the mere participation of the company and the officer in the same filing, without anything more to create an interest in them in the client's lease, does not constitute a violation of the regulations which should be charged against the client.

A reference in a letter to the Bureau of Land Management from the winning drawee in a simultaneous oil and gas lease filing to "majority owners" of the

OIL AND GAS LEASES--ContinuedAPPLICATIONS--ContinuedSole Party in Interest--Continued

lease, by itself is not sufficient to show there were undisclosed parties in interest at the time the offer was filed, but it would ordinarily warrant further investigation. Where a hearing is ordered on other issues to determine if there was a violation of the regulations in the filing, evidence should also be presented on this issue to explain the meaning of the reference and to show whether someone other than the offeror had an interest in the offer at the time it was filed.

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting against multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of Eden Capital Corp. and its clientele where there are ambiguities in the complex contract which provides for a preliminary division of lease obligations and proceeds and establishment of a lease escrow fund to protect funds promised to the client if the client exercises an option by which Eden will buy all leases in a particular lease program subscribed to by the client, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients of Eden have given to the terms.

Harry S. Hills, Kenneth E. Roth, 48 IBLA 356 (July 11, 1980)

When an offer to lease is filed by a person asserting he is the sole party in interest in the offer, and 2 months later an interest in the offer is created in another person, it is not proper to reject the offer on the ground that the showings required by 43 CFR 3102.7 were not filed within 15 days after the offer was first filed.

Albert W. Taylor, 49 IBLA 103 (July 28, 1980)

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest, and there is a failure to file the statement of their interests as required by 43 CFR 3102.7.

Clayton H. Read and Gerald A. Myres, 49 IBLA 200 (Aug. 11, 1980)

Clayton H. Read, Gerald A. Myres, 49 IBLA 271 (Aug. 18, 1980)

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of a leasing service and its clientele where there are ambiguities in the complex contract between them, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients have given to the terms.

Valerie Mellor, Elizabeth R. Drozda, 49 IBLA 303 (Aug. 20, 1980)

OIL AND GAS LEASES--ContinuedAFFILIATIONS--ContinuedSole Party in Interest--Continued

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Service Company, a leasing service, and issuance of the lease, shall be suspended pending appropriate action by ELM to determine whether there has been a violation of the regulations requiring disclosure of interests in a lease, when an offer is filed, and prohibiting against the multiple filings of lease offers in a simultaneous filing, arising from the RSC's client referral program whereby client A, for whom RSC files offers, can share in the proceeds of RSC's commission on a sale of client B's oil and gas lease negotiated by RSC if client B was referred to RSC by client A.

Lloyd Chemical Sales, Inc., 49 IBLA 392 (Sept. 5, 1980)

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7, requiring the disclosure of interested parties.

Wayne E. DeFord, 50 IBLA 216 (Sept. 30, 1980)

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When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.5-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the ELM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Donald W. Cover, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

Although under the Departmental regulations a competitive bidder in an oil and gas lease sale, must, where there is another party in interest, submit the signed statements required by 43 CFR 3102.7, failure to comply with the regulation does not require rejection of the bid. This result follows because in noncompetitive offerings the critical element is determining the first qualified offeror. For competitive bidding, the

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

amount of the bid replaces priority of filing as the dominant factor.

Black Hawk Resources Corp., 50 IBLA 399 (Oct. 24, 1980)
87 I.D. 497

Where it appears that there may have been a violation of the disclosure and/or interest regulations (43 CFR 3102.7 and 3112.5-2) asserted by a protest, the adjudication of the appeal stemming from the dismissal of the protest is properly suspended pending appropriate action by BLM to determine whether there has been a violation of those regulations.

Geosearch, Inc., 50 IBLA 409 (Oct. 24, 1980)

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Service Company, a leasing service, and issuance of the lease, properly is suspended pending appropriate action by BLM to determine whether there has been a violation of the disclosure and interest regulations. BLM will investigate a filing service's relationship with the offeror where it appears that the disclosure and interest regulations may have been violated by a referral program offered by the filing service.

Geosearch, Inc., 51 IBLA 59 (Oct. 31, 1980)

Where an applicant is neither trustee nor guardian of her minor grandsons, she has not violated 43 CFR 3102.7 requiring disclosure of other parties in interest even though she intends to transfer part of her interest in any lease obtained to the grandsons when they reach legal age and makes an indirect reference to them on the face of the drawing entry card. Minors are not qualified applicants under 43 CFR 3102.1-1(b) and under the facts of this case, the grandsons have no "interest" in the prospective lease as defined by 43 CFR 3100.0-5(b). At most, they have a hope or expectation of future benefit from the lease.

Blanche Chomicki, 51 IBLA 128 (Nov. 20, 1980)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the ELM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

The Department has authority to cancel leases administratively where the lease was granted pursuant to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the time of filing, the existence of all parties holding interests in the offer.

The fact that an entitlement to share in the proceeds from the sale of a lease is contingent upon the lease being sold does not mean that this entitlement is not an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

ASSIGNMENTS OR TRANSFERS

In general, the assignee, upon approval of the assignment, becomes the lessee of the Government as to the assigned interest and is responsible for complying with all lease terms and conditions.

Dale Carr, 45 IBLA 183 (Jan. 30, 1980)

Assuming arguendo, that the Department had authority otherwise to reinstate a terminated oil and gas lease under 30 U.S.C. § 188(c) (1976), where there has been late payment of rental, it could not do so where reasonable diligence was not shown nor a justifiable excuse given for the failure to exercise such diligence. Generally, a lessee will not be deemed to have exercised reasonable diligence where payment is transmitted after the due date. No justifiable excuse arises where an assignee of the lease relies on the assignor for payment, where a lessee relies on receipt of a courtesy billing notice from the Bureau of Land Management, or where a lessee was uninformed of the rental payment requirements.

Alice M. Conte, Phyllis Lane Zehr, 46 IBLA 312 (Apr. 4, 1980)

ELM properly refuses to recognize the asserted interest of a party in a lease offer where no application for BLM's approval of a transfer of any interest in this offer and lease (if issued) has ever been filed, and ELM properly determines to issue the lease, if appropriate, to the offeror and not to the asserted interest holder.

An amended regulation restricting transfer of oil and gas interests governs where an offeror has not sought approval of a transfer of a pending offer to lease and lease (if issued) prior to June 16, 1980, the effective date of the amendment. Accordingly, under this regulation, BLM cannot consider any application for approval of such a transfer until after issuance of the lease.

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

OIL AND GAS LEASES--ContinuedBONA FIDE PURCHASER

Under 30 U.S.C. § 184(h) (2) (1970) and 43 CFR 3102.1-2(a) BLM properly dismissed a protest and refused to cancel an oil and gas lease which had been assigned to a bona fide purchaser, even though the lease might have been subject to cancellation prior to the assignment if the offeror/assignor's original offer was defective under 43 CFR 3102.7 and 3112.5-2.

Geosearch, Inc., 47 IBLA 39 (Apr. 11, 1980)

Even though created by a lease issued to a junior noncompetitive over-the-counter oil and gas lease offer in derogation of the superior rights to the same land of a senior offeror, oil and gas lease rights based on the junior offer may not be cancelled where they have been acquired by a bona fide purchaser, and, where assignees of such lease rights have not had the opportunity to show that they acquired and hold these rights as bona fide purchasers, the matter will be remanded to BLM to allow them to so show, and to allow the senior offeror to show to the contrary.

George P. Wolter, Jr., 47 IBLA 396 (May 22, 1980)

Where BLM does not officially reject or return the simultaneous noncompetitive oil and gas lease offers drawn with second and third priority after the issuance of the leases to the first drawees, the second and third drawees retain an interest which must be considered if the leases are cancelled because the first drawees' offers are defective, provided that the leases have not been assigned to bona fide purchasers.

Geosearch, Inc., 51 IBLA 59 (Oct. 31, 1980)

BONDS

An oil and gas lease bond may not have its period of liability terminated until all the terms and conditions of the lease have been satisfied.

O. R. Weyrich, Jr., 49 IBLA 347 (Aug. 22, 1980)

Regulation 43 CFR 3104.2 requires a general lease and drilling bond in an amount not less than \$10,000, conditioned upon compliance with all the terms and conditions of the lease, to be furnished prior to entry and commencement of geophysical exploration or drilling operations by the lessee.

SID, 50 IBLA 262 (Sept. 30, 1980)

CANCELLATION

Where an oil and gas lease has inadvertently been issued for land, part of which was the subject of a forest exchange application, the cancellation of that part of the lease will be reversed if the exchange application did not include the mineral estate and has been withdrawn by the proponent, and no other obstacle or objection to the lease exists.

Kerr-McGee Corp., 46 IBLA 156 (Mar. 19, 1980)

OIL AND GAS LEASES--ContinuedCANCELLATION--Continued

Under 30 U.S.C. § 184(h) (2) (1970) and 43 CFR 3102.1-2(a) BLM properly dismissed a protest and refused to cancel an oil and gas lease which had been assigned to a bona fide purchaser, even though the lease might have been subject to cancellation prior to the assignment if the offeror/assignor's original offer was defective under 43 CFR 3102.7 and 3112.5-2.

Geosearch, Inc., 47 IBLA 39 (Apr. 11, 1980)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and where it subsequently issues a second conflicting lease for the same lands to the senior offeror, its decision cancelling the lease issued to the senior offeror will be vacated, as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successors in interest have not been joined to BLM's proceedings nor named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be cancelled insofar as they conflict with the senior, legally superior offer.

Even though created by a lease issued to a junior noncompetitive over-the-counter oil and gas lease offer in derogation of the superior rights to the same land of a senior offeror, oil and gas lease rights based on the junior offer may not be cancelled where they have been acquired by a bona fide purchaser, and, where assignees of such lease rights have not had the opportunity to show that they acquired and hold these rights as bona fide purchasers, the matter will be remanded to BLM to allow them to so show, and to allow the senior offeror to show to the contrary.

George P. Wolter, Jr., 47 IBLA 396 (May 22, 1980)

Under 30 U.S.C. § 188(b) (1976), an oil and gas lease issued after Aug. 21, 1935, under the provisions of 30 U.S.C. § 226 (1976), is subject to cancellation by the Secretary for lease violation unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. A lease known to contain such deposits is subject to cancellation in accordance with 30 U.S.C. § 184(h) (1) (1976), which requires a proceeding in Federal district court instituted by the Attorney General.

By the terms of 30 U.S.C. § 184(h) (2) (1976), the Department is prevented from cancelling a lease held by a qualified bona fide purchaser, even though the interest of its assignor or other predecessor in title (including the original lessee of the United States) may have been subject to cancellation for a violation of the Mineral Leasing Act. In the absence of any evidence that the facts surrounding certain mesne assignments were sufficient to put an ordinary prudent person on inquiry, an inquiry which, if followed with reasonable diligence, would lead to the discovery of defects in the title to the lease or equitable rights of any other persons affecting the property, the Department is prevented from cancelling a lease based upon violations by a lease holder's predecessor-in-interest.

Where a protestant challenges the bona fides of an oil and gas leaseholder, the burden is upon appellant, not the BLM, to establish by facts the substance of its charge.

If a lease is cancelled or forfeited to the Government pursuant to 30 U.S.C. § 184(h) (1976), such

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

lease shall be sold by the Secretary to the highest responsible bidder by competitive bidding.

Naartex Consulting Corp., 48 IBLA 166 (June 9, 1980)

The Department has authority to cancel leases administratively where the lease was granted pursuant to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the time of filing, the existence of all parties holding interests in the offer.

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

COMMUNITIZATION AGREEMENTS

Federal lands included in a unit agreement approved pursuant to 30 CFR Part 226 or a communitization agreement approved pursuant to 43 CFR 3105.2 are treated like an individual oil and gas leasehold for the purpose of determining whether rights-of-way are required for facilities located thereon.

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.L. 291

Where oil and gas lessees allege that they have entered into a communitization agreement associating the leased land with adjacent lands on which there is a producing well, but do not so show, and where the record shows that no such agreement was filed for approval with GS prior to the anniversary date of the lease in any event, the lease is not properly regarded as having been in "producing" status on the anniversary date, so that it terminates automatically by operation of law upon the lessees' failure to submit annual rental on or before this date.

Melvin A. Brown, Douglas Bickerstaff, 49 IBLA 234 (Aug. 12, 1980)

COMPETITIVE LEASES

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

John C. Eford, 45 IBLA 84 (Jan. 17, 1980)

M. S. Mack, 45 IBLA 99 (Jan. 17, 1980)

Bernard Gencorelli, 46 IBLA 53 (Feb. 20, 1980)

Harry Ptasynski, 48 IBLA 246 (June 17, 1980)

Where a bidder submits with his bid one-fifth of the amount due in the form of a personal money order payable to the Bureau of Land Management pursuant to the provisions of the applicable regulation, 43 CFR 3120.1-4(b), and statements on the sale notice allowing

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

money orders, his bid may not be rejected for not being in conformity with the intent of the regulations.

Ross L. Kinnaman, 48 IBLA 239 (June 17, 1980)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis in evaluating a lease bid.

Where, following remand because the record fails to disclose a rational basis for rejection of the high bid at a competitive oil and gas sale, the Geological Survey supplies the factual basis and a reasoned analysis supporting the conclusion that the bid is inadequate, ELM may so conclude and properly reject the bid.

Ojai Oil Co., 49 IBLA 33 (July 21, 1980)

Although under the Departmental regulations a competitive bidder in an oil and gas lease sale, must, where there is another party in interest, submit the signed statements required by 43 CFR 3102.7, failure to comply with the regulation does not require rejection of the bid. This result follows because in noncompetitive offerings the critical element is determining the first qualified offeror. For competitive bidding, the amount of the bid replaces priority of filing as the dominant factor.

Black Hawk Resources Corp., 50 IBLA 399 (Oct. 24, 1980) 87 I.L. 497

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where ELM incorporates by reference a Geological Survey memorandum into its decision rejecting a competitive oil and gas lease offer and where such memorandum was the principal basis on which the decision rejecting the offer was made, the memorandum must be made available to the offeror.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose the factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum which merely describes the process by which the Geological Survey determines the presale value for a parcel and states the resulting value without revealing the underlying facts is not sufficient to support a bid's rejection.

Southern Union Exploration Co., 51 IBLA 89 (Nov. 5, 1980)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Geological Survey is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Where an uplands competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose sufficient justification for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Southern Union Exploration Co., 51 IBLA 149 (Nov. 26, 1980)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where the Bureau of Land Management rejects a competitive oil and gas lease offer as too low and provides no factual explanation to the offeror and where it appears from the record that the decision was not based on a reasoned evaluation of the facts, the offeror is entitled to readjudication of the bid. The case will be remanded to BLM for readjudication where subsequent justification for the rejection submitted to the Board of Land Appeals is insufficient to permit reevaluation of the bid by the Board on appeal.

Yates Petroleum Corp., 51 IBLA 181 (Dec. 2, 1980)

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Arthur E. Meinhardt and Irwin Rubenstein, 46 IBLA 27 (Feb. 20, 1980)

Before an oil and gas lease for Federal acquired lands can issue, the consent of the agency administering the surface is required by statute, and an applicant for such a lease must execute any special stipulations required by the administering agency as a condition to the giving of its consent. In such cases the Department of the Interior has no jurisdiction to waive execution of the special stipulations or to alter the terms thereof.

Thomas Connell, 46 IBLA 331 (Apr. 4, 1980)

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY--Continued

Where public lands are withdrawn for use by the National Guard, the refusal of an offer to lease the land for oil and gas must be supported by cogent and specific reasons in order to avoid a determination that the action is arbitrary, capricious, or an abuse of discretion.

Howard L. Foss, 49 IBLA 87 (July 22, 1980)

CONTRACTS FOR SALE OF ROYALTY OIL OR GAS

When the point of delivery of CCS royalty oil produced under a sec. 8 lease, 43 U.S.C. § 1337 (1976), as amended, 43 U.S.C. § 1337 (Supp. II 1978), is on or immediately adjacent to the leased area, the lessee is not entitled to reimbursement for costs incurred in transporting the royalty oil to such delivery point.

JFD, Inc., 49 IBLA 337 (Aug. 25, 1980)

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

Allied Materials Corp., 50 IBLA 353 (Oct. 16, 1980)

DESCRIPTION OF LAND

If acquired lands sought for oil and gas leasing have been surveyed under the rectangular system of public land surveys, and their description can be conformed to that system, the lands must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner.

The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the offeror, and any difficulties in ascertaining a proper metes and bounds description do not preclude the requirement that such lands be correctly described.

A description of land applied for in an oil and gas lease offer for acquired lands is proper so long as it meets the requirements of the applicable regulation whether it includes some land not available for lease or omits some that is.

Where an offer for a noncompetitive oil and gas lease for acquired lands contains a defective description of the lands sought and prior to lease issuance a second offer is filed correctly describing the same lands, the lease must be cancelled to the extent of the conflict in the two offers.

Sam E. Jones, 45 IBLA 208 (Jan. 30, 1980)

DISCOVERY

The automatic termination provision of 30 U.S.C. § 188(b) (1976) is applicable to a lease whose lands formed part of a unit upon which production has at all times been maintained, but were thereafter eliminated

OIL AND GAS LEASES--Continued

DISCOVERY--Continued

therefrom and simultaneously segregated by reason of their inclusion in a second unit, since terminated.

Bass Enterprises Production Co., 47 IBLA 53 (Apr. 14, 1980)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

Known geologic structures are of two kinds: undefined and defined. The essential difference between these structures is the formality and detail of the defined procedure which does not permit the necessary day-to-day determinations needed by the Bureau of Land Management in its current administration of leases and lease applications.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Vernon and Rita Benson, 48 IBLA 64 (May 29, 1980)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

James Muslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other purposes in the public interest.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 31C1.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Carol Lee Hatch, 45 IBLA 4 (Jan. 8, 1980)

An oil and gas lease offer for minerals reserved to the United States is properly rejected where the Secretary of the Interior in a notice published in the Federal Register has declared that such minerals will not be subject to leasing.

David A. Frcvinse, 45 IBLA 8 (Jan. 8, 1980)

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

John C. Ffird, 45 IBLA 84 (Jan. 17, 1980)

M. S. Mack, 45 IBLA 99 (Jan. 17, 1980)

Bernard Gencorelli, 46 IBLA 53 (Feb. 20, 1980)

Harry Ptasynski, 48 IBLA 246 (June 17, 1980)

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

David A. Frcvinse, 45 IBLA 111 (Jan. 23, 1980)

Eldin L. R. Johnson, Marilyn Johnson, 47 IBLA 366 (May 21, 1980)

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1976), the Secretary of the Interior has discretion to refuse to issue an oil and gas lease lying within the boundaries of the National Desert Wildlife Range in the interest of conservation, wildlife protection, and other purposes in the public interest.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 31C1.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1976).

Dean W. Rowell, 45 IBLA 225 (Jan. 31, 1980)

Tucker & Snyder Exploration, Inc., 49 IBLA 176 (July 30, 1980)

John B. Anderson, 50 IBLA 38 (Sept. 9, 1980)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Tucker & Snyder Exploration, Inc., 45 IBLA 248 (Feb. 4, 1980)

John R. Anderson, 46 IBLA 123 (Feb. 29, 1980)

Ida Lee Anderson, 46 IBLA 385 (Apr. 10, 1980)

The Secretary of the Interior has the discretionary authority to refuse to lease public land for oil and gas where leasing would not be in the public interest, even though the land applied for is not withdrawn from operation of the Mineral Leasing Act. The refusal to lease must be supported by facts of record that the lease would not be in the public interest because it is incompatible with uses of the land which are worthy of preservation or would otherwise be undesirable.

W. E. Haley, 46 IBLA 151 (Mar. 19, 1980)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis in evaluating a lease bid.

Where, following remand because the record fails to disclose a rational basis for rejection of the high bid at a competitive oil and gas sale, the Geological Survey supplies the factual basis and a reasoned analysis supporting the conclusion that the bid is inadequate, BLM may so conclude and properly reject the bid.

Ojai Oil Co., 49 IBLA 33 (July 21, 1980)

In the absence of a withdrawal of public land from mineral leasing, public lands are usually subject to leasing for oil and gas in the discretion of and under conditions imposed by the Secretary of the Interior, but lands withdrawn for use by the Department of Defense may be leased only where the Secretary of Defense, after consultation with the Secretary of the Interior, determines that such leasing is not inconsistent with the military use.

Where public lands are withdrawn for use by the National Guard, the refusal of an offer to lease the land for oil and gas must be supported by cogent and specific reasons in order to avoid a determination that the action is arbitrary, capricious, or an abuse of discretion.

Howard L. Ross, 49 IBLA 87 (July 22, 1980)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other purposes in the public interest.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Lake Ilo National Wildlife Refuge is not subject to oil and gas leasing unless the lands are subject to drainage.

David A. Province, 49 IBLA 134 (July 26, 1980)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land is being used as a habitat for endangered animals, is a natural scenic asset, and has potential recreational value, and where EIM determines that oil and gas operations would result in unavoidable adverse impact on these attributes, rejection of the lease offer will be affirmed in the absence of countervailing compelling reasons.

Carol Lee Hatch, 50 IBLA 80 (Sept. 17, 1980)

Where the Secretary of the Interior has specifically determined by formal publication of a memorandum that lands in a certain section of a national forest are to be withheld from leasing, he has exercised his plenary discretion to refuse to issue leases, and subsequent offers for affected lands are properly rejected.

James R. Learned et al., 50 IBLA 416 (Oct. 24, 1980)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings, unsupported by facts, do not warrant rejection.

Tucker and Snyder Exploration Co., Inc., et al., 51 IBLA 35 (Oct. 30, 1980)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose the factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum which merely describes the process by which the Geological Survey determines the presale value for a parcel and states the resulting

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

value without revealing the underlying facts is not sufficient to support a bid's rejection.

Southern Union Exploration Co., 51 IBLA 89 (Nov. 5, 1980)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Southern Union Exploration Co., 51 IBLA 149 (Nov. 26, 1980)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Yates Petroleum Corp., 51 IBLA 181 (Dec. 2, 1980)

DRAINAGE

30 CFR 221.21(c) provides that an oil and gas lessee shall drill and produce from such wells as are necessary to protect the lessor from loss of royalty by reason of drainage or pay a sum estimated to reimburse the lessor for such loss of royalty. Where Geological Survey affords the lessee an opportunity to submit evidence as to why a paying well cannot be drilled and the lessee does not submit an adequate response, or drill the well, compensatory royalty is properly assessed.

Inexco Oil Co., 45 IBLA 377 (Feb. 13, 1980)

An order by a Conservation Manager of the Geological Survey directing oil and gas lessees of Outer Continental Shelf lands to subscribe to a unit plan allocating production from a specific reservoir on the basis of original net acre-feet of gas-bearing sand, i.e., the volume of gas-bearing sand in place prior to production of any gas from the reservoir, will be affirmed where such a plan of allocation of production is in common use on CCS lands and it has not been shown that the order is arbitrary or capricious.

Texaco, Inc., Gulf Oil Exploration and Production Co., 51 IBLA 332 (Dec. 29, 1980) 87 I.E. 648

DRILLING

An application for permit to drill for oil and gas in a "potash enclave" in a designated "Potash Area" is properly denied where the applicant fails to show that its application comes within either of the two exceptions to the policy in favor of potash development enunciated in an order of the Secretary dated Oct. 7, 1975, 40 FR 51486 (Nov. 5, 1975).

Bass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

OIL AND GAS LEASES--Continued

DRILLING--Continued

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved unit agreement on the last day of the lease term with a bona fide intent to complete a producing well.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

EXTENSIONS

* A request for extension of a lease terminated by operation of law must be denied. A lease in its extended term because of production can be held only so long as oil and gas in paying quantities is produced.

Robert Hawkins, 45 IBLA 105 (Jan. 17, 1980)

A State Office properly holds that a noncompetitive oil and gas lease expires at the end of its primary term when there is no cognizable activity on the leased lands as of that date under 30 U.S.C. § 226(e) (1976), and the unit or cooperative provisions of 30 U.S.C. § 226(j) (1976) have not operated to extend the lease.

Dale Carr, 45 IBLA 183 (Jan. 30, 1980)

Noncompetitive oil and gas leases extended beyond their primary term pursuant to 43 CFR 3107.4-3 expire by operation of law at the end of the extension unless one of the statutory grounds for extension is established.

Duncan Miller, 46 IBLA 285 (Mar. 27, 1980)

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976). Where the lessee shows that his failure to pay rental timely is justifiable, he pays the required rental within 20 days after the due date, excluding the normal business days the office is closed due to snowstorms, and he otherwise complies with statutory and regulatory requirements, he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1976).

Western Reserves Oil Co., 46 IBLA 295 (Mar. 31, 1980)

Where a unit agreement specifies that a determination as to whether a well completed prior to the effective date of the agreement is capable of producing unitized substances in paying quantities will be deferred until an initial participating area is established as the result of completion of a well for production in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an

OIL AND GAS LEASES--ContinuedEXTENSIONS--Continued

approved unit agreement on the last day of the lease term with a bona fide intent to complete a producing well.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

An oil and gas lease, which is in its extended term because of production, terminates when production ceases unless pursuant to 30 U.S.C. § 226(f) (1976): (1) reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes; (2) the Secretary has ordered or consented to suspension of operations or production; or (3) for lands on which there is a well capable of production, the lessee places the well in production within 60 days of receipt of notice to do so.

Michael P. Grace, 50 IBLA 150 (Sept. 26, 1980)

FIRST-QUALIFIED APPLICANT

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and the right of the next drawee to receive first consideration attaches eo instante.

Zenith S. Merritt, 46 IBLA 24 (Feb. 20, 1980)

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by corporate qualification papers or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.4-1. Such omissions cannot be cured after the drawing.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980)
87 I.L. 110

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and where it subsequently issues a second conflicting lease for the same lands to the senior offeror, its decision cancelling the lease issued to the senior offeror will be vacated, as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successors in interest have not been joined to BLM's proceedings nor named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be cancelled insofar as they conflict with the senior, legally superior offer.

Even though created by a lease issued to a junior noncompetitive over-the-counter oil and gas lease offer in derogation of the superior rights to the same land of a senior offeror, oil and gas lease rights based on the junior offer may not be cancelled where they have been acquired by a bona fide purchaser, and, where assignees of such lease rights have not had the opportunity to show that they acquired and hold these rights as bona fide purchasers, the matter will be remanded to BLM to allow them to so show, and to allow the senior offeror to show to the contrary.

George P. Wolter, Jr., 47 IBLA 396 (May 22, 1980)

OIL AND GAS LEASES--ContinuedFIRST-QUALIFIED APPLICANT--Continued

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. A first-drawn drawing entry card oil and gas lease offer signed by an agent but which is not accompanied by the statements required by regulation must be rejected because the offeror is not the first-qualified applicant.

Viking Resources Corp., 48 IBLA 338 (July 3, 1980)

When land has previously been included in a lease that has been canceled, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system provided under 43 CFR 3112.

David A. Frovinse, 50 IBLA 271 (Oct. 6, 1980)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(t).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the ELM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Donald W. Cover, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (Op. Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(t).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the ELM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractual consideration running from the client to the leasing service,

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

the "waiver" is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

The fact that an entitlement to share in the proceeds from the sale of a lease is contingent upon the lease being sold does not mean that this entitlement is not an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

FUTURE AND FRACTIONAL INTEREST LEASES

Under 43 CFR 3130.2-1, rental for noncompetitive oil and gas leases for acquired lands in which the United States owns an undivided fractional interest is payable at the same rate as provided for full acreage leases and not prorated.

Wilfred Flomis, 45 IELA 230 (Feb. 4, 1980)

KNOWN GEOLOGIC STRUCTURE

Land within a known geologic structure of a producing oil or gas field can only be leased competitively under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(b) (1976), and a noncompetitive offer for such lands must be rejected.

L. A. Walstrom, Jr., 46 IELA 389 (Apr. 10, 1980)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

Known geologic structures are of two kinds: undefined and defined. The essential difference between these structures is the formality and detail of the defined procedure which does not permit the necessary day-to-day determinations needed by the Bureau of Land Management in its current administration of leases and lease applications.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Vernon and Rita Benson, 48 IBLA 64 (May 29, 1980)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

A determination by the Geological Survey that lands are within an undefined known geologic structure will not be disturbed in the absence of a clear showing that the determination was improperly made.

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(h) (1).

CO2-In-Action, Inc., 50 IELA 54 (Sept. 15, 1980)

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not, in fact, contain valuable deposits of oil or gas. It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proven barren.

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(h) (1).

SID, 50 IELA 262 (Sept. 30, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The fact that the noncompetitive offeror followed all of the applicable rules and regulations in making the offer does not vitiate this conclusion.

Pauline C. Iehsack, 50 IELA 361 (Oct. 16, 1980)

Where, on appeal, an oil and gas lessee submits evidence disputing a decision of the Geological Survey that the land embraced by his lease is not on a known geologic structure of a producing oil or gas field, and there is no basis in the record to support the Geological Survey's conclusion, a decision increasing the annual rental should be set aside and the case remanded for consideration by BLM of appellant's contentions.

Robert L. Haynie et al., 51 IBLA 1 (Oct. 28, 1980)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

A noncompetitive oil and gas offer to lease must be rejected where either before or after the filing of the offer and prior to the time of the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field.

James Muslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

An applicant for an oil and gas lease who challenges a determination by the Geological Survey that lands are situated within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error.

Ervin Wheeler, Toni Shugart, Kathy Coffee, 51 IBLA 66 (Oct. 31, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field. The fact that the noncompetitive offeror followed all of the applicable rules and regulations in making his offer does not vitiate this conclusion.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Donnie R. Clouse, 51 IBLA 221 (Dec. 10, 1980)

LANDS SUBJECT TO

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Carol Lee Hatch, 45 IBLA 4 (Jan. 8, 1980)

John R. Anderson, 46 IBLA 123 (Feb. 29, 1980)

Ida Lee Anderson, 46 IBLA 385 (Apr. 10, 1980)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

An oil and gas lease offer for minerals reserved to the United States is properly rejected where the Secretary of the Interior in a notice published in the Federal Register has declared that such minerals will not be subject to leasing.

David A. Provinse, 45 IBLA 8 (Jan. 8, 1980)

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

Land included in an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an offer filed for such land must be rejected.

David A. Provinse, 45 IBLA 111 (Jan. 23, 1980)

Lands within a proposed addition to the National Desert Wildlife Range are not subject to noncompetitive oil and gas leasing because the proposed withdrawal, if effective, would preclude oil and gas leasing, the same as the existing withdrawal.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Tucker & Snyder Exploration, Inc., 45 IBLA 248 (Feb. 4, 1980)

Lands situated within the boundaries of incorporated cities, towns or villages are excluded from oil and gas leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976).

Ed Pendleton, 45 IBLA 398 (Feb. 13, 1980)

L. A. Walstrom, Jr., 46 IBLA 389 (Apr. 10, 1980)

The Bureau of Land Management properly rejects an oil and gas lease offer for land patented in 1874 under the placer mining laws.

Republic Oil and Mining Co., 46 IBLA 120 (Feb. 29, 1980)

Where an oil and gas lease has inadvertently been issued for land, part of which was the subject of a forest exchange application, the cancellation of that part of the lease will be reversed if the exchange application did not include the mineral estate and has been withdrawn by the proponent, and no other obstacle or objection to the lease exists.

Kerr-McGee Corp., 46 IBLA 156 (Mar. 19, 1980)

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under sec. 3 of the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. § 352 (1976).

Whitney H. Marvin, 46 IBLA 290 (Mar. 31, 1980)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), expressly precludes leasing in national parks and national monuments. Therefore, the Department of the Interior has no authority to issue an oil and gas lease for lands in the Death Valley National Monument and an offer to lease land within the monument must be rejected.

Fred R., Anna R., and Kristine A. Cerminaro, 46 IBLA 301 (Mar. 31, 1980)

Oil and gas lease offers embracing lands withdrawn specifically from oil and gas leasing and by Public Land Order No. 674, of Oct. 7, 1950, reserved for an agency of the Department of Defense, are properly rejected. Lands declared surplus are not subject to leasing by this Department.

An oil and gas lease offer filed for land which has been previously withdrawn from mineral leasing may be properly rejected since it will not be validated by any future modification or revocation of the order of withdrawal. It is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

Edward C. Shepardson, 47 IBLA 223 (May 13, 1980)

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

Eldin L. R. Johnson, Marilyn Johnson, 47 IBLA 366 (May 21, 1980)

A noncompetitive oil and gas lease offer for lands patented under a railroad land grant must be rejected because the United States does not own the mineral deposits in the lands.

Diane B. Katz, 48 IBLA 118 (May 30, 1980)

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Lake Ilo National Wildlife Refuge is not subject to oil and gas leasing unless the lands are subject to drainage.

David A. Provinse, 49 IBLA 134 (July 28, 1980)

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for geothermal resources leasing, and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

Trent J. Parker, 49 IBLA 209 (Aug. 11, 1980)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Under sec. 17(j) of the Mineral Leasing Act, the Secretary of the Interior may authorize the subsurface storage of oil and gas in lands leased or subject to leasing under the Act. Any lease on which storage is authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities. A storage agreement which recognizes an existing lease and only reserves to the United States all of the United States interest in minerals in the lands does not terminate the rights of the existing lessee to drill for and produce oil and gas. An oil and gas lease offer submitted subsequently by a third party for the lands subject to the lease is properly rejected since the United States does not hold the mineral interest sought.

American Natural Gas Production Co., 49 IBLA 230 (Aug. 12, 1980)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by ELM as available for simultaneous noncompetitive offers.

Jack F. Lea, 49 IBLA 358 (Aug. 29, 1980)

Lands under reservoir rights-of-way may be leased only under the authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). However, the language of the 1930 Act is construed to mean that it applies only to land actually within the limits of the right-of-way and that the lands in legal subdivisions, exclusive of the reservoir right-of-way may be leased under the Mineral Leasing Act of 1920, provided there are no justifiable reasons for refusing to lease them.

R. C. Everidge, 50 IBLA 173 (Sept. 30, 1980)

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for airport purposes and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper under the regulations to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

Donald Epperson, 50 IBLA 267 (Sept. 30, 1980)

When land has previously been included in a lease that has been canceled, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system provided under 43 CFR 3112.

David A. Provinse, 50 IBLA 271 (Oct. 6, 1980)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law at the end of its primary term, because under 43 CFR 3112.1-1 land in an expired lease is subject to the filing of new lease offers only in accordance with simultaneous filing procedures.

Martha F. Findeiss, 50 IBLA 359 (Oct. 16, 1980)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Where the Secretary of the Interior has specifically determined by formal publication of a memorandum that lands in a certain section of a national forest are to be withheld from leasing, he has exercised his plenary discretion to refuse to issue leases, and subsequent offers for affected lands are properly rejected.

Where lands are withheld from leasing or have not been made subject to the operation of mineral leasing laws, applications must be rejected and cannot be held pending possible future availability of the lands.
43 CFR 2091.1.

James R. Learned et al., 50 IBLA 416 (Oct. 24, 1980)

A noncompetitive oil and gas offer to lease must be rejected where either before or after the filing of the offer and prior to the time of the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field.

James Muslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

Where an application for withdrawal proposes to withdraw certain lands from the operation of the mineral leasing and mining laws to prevent interference with the use of the land for airport purposes, the Bureau of Land Management should suspend action on oil and gas lease offers filed subsequent to the withdrawal application pending final action on the proposed withdrawal.

Trent J. Parker, 51 IBLA 178 (Dec. 2, 1980)

NONCOMPETITIVE LEASES

If acquired lands sought for oil and gas leasing have been surveyed under the rectangular system of public land surveys, and their description can be conformed to that system, the lands must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner.

Where an offer for a noncompetitive oil and gas lease for acquired lands contains a defective description of the lands sought and prior to lease issuance a second offer is filed correctly describing the same lands, the lease must be cancelled to the extent of the conflict in the two offers.

Sam P. Jones, 45 IBLA 208 (Jan. 30, 1980)

Noncompetitive oil and gas leases extended beyond their primary term pursuant to 43 CFR 3107.4-3 expire by operation of law at the end of the extension unless one of the statutory grounds for extension is established.

Duncan Miller, 46 IBLA 285 (Mar. 27, 1980)

Land within a known geologic structure of a producing oil or gas field can only be leased competitively under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(b) (1976), and a noncompetitive offer for such lands must be rejected.

L. A. Walstrom, Jr., 46 IBLA 389 (Apr. 10, 1980)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and where it subsequently issues a second conflicting lease for the same lands to the senior offeror, its decision cancelling the lease issued to the senior offeror will be vacated, as the statute governing oil and gas leasing of non-RGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successors in interest have not been joined to BLM's proceedings nor named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be cancelled insofar as they conflict with the senior, legally superior offer.

Even though created by a lease issued to a junior noncompetitive over-the-counter oil and gas lease offer in derogation of the superior rights to the same land of a senior offeror, oil and gas lease rights based on the junior offer may not be cancelled where they have been acquired by a bona fide purchaser, and, where assignees of such lease rights have not had the opportunity to show that they acquired and hold these rights as bona fide purchasers, the matter will be remanded to BLM to allow them to so show, and to allow the senior offeror to show to the contrary.

George P. Wolter, Jr., 47 IBLA 396 (May 22, 1980)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

Known geologic structures are of two kinds: undefined and defined. The essential difference between these structures is the formality and detail of the defined procedure which does not permit the necessary day-to-day determinations needed by the Bureau of Land Management in its current administration of leases and lease applications.

Vernon and Rita Benson, 48 IBLA 64 (May 29, 1980)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease for an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days of receipt of notice that such payment is due.

Earl F. Bartley, 49 IBLA 140 (July 30, 1980)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The fact that the noncompetitive offeror followed all of the applicable rules and regulations in making the offer does not vitiate this conclusion.

Pauline C. Lebsack, 50 IBLA 361 (Oct. 16, 1980)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

James Muslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Ervin Wheeler, Toni Shugart, Kathy Coffee, 51 IBLA 66 (Oct. 31, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field. The fact that the noncompetitive offeror followed all of the applicable rules and regulations in making his offer does not vitiate this conclusion.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Donnie R. Clouse, 51 IBLA 221 (Dec. 10, 1980)

OIL AND GAS LEASES--Continued

PRODUCTION

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

Vernon and Rita Benson, 48 IBLA 64 (May 29, 1980)

James Muslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

Where a unit agreement specifies that a determination as to whether a well completed prior to the effective date of the agreement is capable of producing unitized substances in paying quantities will be deferred until an initial participating area is established as the result of completion of a well for production in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which such well exists.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

REINSTATEMENT

When an oil and gas lessee submits the amount of rental stated in a bill rendered by an authorized officer and the amount is found to be in error resulting in a deficiency, generally such lease shall not have automatically terminated for failure to pay the annual rental timely and new offers to lease the lands must be rejected.

Lucinda E. Feggs, 45 IBLA 60 (Jan. 14, 1980)

Where an oil and gas lessee erroneously transmits a check for the annual rental to the wrong office of the Bureau of Land Management, which office receives the payment 14 days prior to the anniversary date but takes no action either to forward the check to the proper office or return it to the lessee until the anniversary date of the lease, a petition for reinstatement of the terminated lease will be granted when it is established that the negligence of BLM employees was an equally causative factor in the lessee's failure to timely pay the rental.

Richard I. Rosenthal, 45 IBLA 146 (Jan. 23, 1980)

The Department of the Interior has no authority to reinstate a terminated oil and gas lease where the full rental has not been paid within 20 days after the date of termination.

Tenneco Oil Co., 46 IBLA 33 (Feb. 20, 1980)

OIL AND GAS LEASES--ContinuedREINSTATEMENT--Continued

Under 30 U.S.C. § 188(c) (1976), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless rental payment is tendered at the proper office within 20 days after the due date.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

Where the failure to pay rental on or before the anniversary date of a lease is attributable to a computer error in the mailing system, neither reasonable diligence nor justification is shown to support a petition for reinstatement.

Reliance on receipt of a courtesy notice from the Bureau of Land Management does not justify late payment and therefore permit reinstatement of an oil and gas lease terminated for failure to pay rental timely.

Melbourne Concept Profit Sharing Trust, Joseph F. Fiato, Carl Gerard, 46 IEIA 87 (Feb. 28, 1980)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied. Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

Placing payment for annual rental for an oil and gas lease in a residential mailbox for posting by the Postal Service without later checking to insure that the payment was picked up does not constitute reasonable diligence, especially when the lessee's regular mail delivery is to a different address. Failure of the payment to then be timely made is not justified, even though the Postal Service admittedly was not making regular stops at that mailbox, because timely payment was still within the lessee's control through the exercise of reasonable diligence.

Harold W. Fullerton, 46 IEIA 116 (Feb. 29, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Philadelphia, Pennsylvania, 2 days before it is due in

OIL AND GAS LEASES--ContinuedREINSTATEMENT--Continued

Cheyenne, Wyoming, does not constitute reasonable diligence.

In order for the failure to make timely payment of the rental justifiable, the failure must be caused by factors outside the lessee's control which were the proximate cause of the failure. Traveling away from home during the latter part of July when payment is due Aug. 1 will not justify late payment.

Harry Zaslow, 46 IEIA 217 (Mar. 27, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and in delivery of the mail. Mailing the rental in Dallas, Texas, 2 days before it is due across the country in Silver Spring, Maryland, does not constitute reasonable diligence.

Bob W. Scott, 46 IEIA 254 (Mar. 27, 1980)

Under 30 U.S.C. § 188(c) (1976), the Secretary of the Interior lacks authority to reinstate an oil and gas lease terminated by operation of law for failure to pay rental timely, unless rental payment is paid within 20 days of the due date.

Assuming arguendo, that the Department had authority otherwise to reinstate a terminated oil and gas lease under 30 U.S.C. § 188(c) (1976), where there has been late payment of rental, it could not do so where reasonable diligence was not shown nor a justifiable excuse given for the failure to exercise such diligence. Generally, a lessee will not be deemed to have exercised reasonable diligence where payment is transmitted after the due date. No justifiable excuse arises where an assignee of the lease relies on the assignor for payment, where a lessee relies on receipt of a courtesy billing notice from the Bureau of Land Management, or where a lessee was uninformed of the rental payment requirements.

Alice M. Conte, Phyllis Lane Zehr, 46 IEIA 312 (Apr. 4, 1980)

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days after the due date.

Administrator of Estate of Valentine M. O'Grady, 47 IEIA 83 (Apr. 21, 1980)

James Valjalo, 50 IEIA 256 (Sept. 30, 1980)

Frank Fursua, 50 IEIA 259 (Sept. 30, 1980)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment on the anniversary date of the lease does not constitute reasonable diligence.

Under 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c), the Department has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of annual rental unless rental payment has been made or tendered within 20 days of the due date.

Kenneth and Era Tweten, 47 IBLA 180 (May 7, 1980)

An oil and gas lease terminated automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank upon which it is drawn, when presented for payment.

An oil and gas lease terminated for nonpayment of rental may be reinstated under 30 U.S.C. § 188(c) (1976) only if the failure to pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Where a lessee submits his rental check timely, but the check is nonnegotiable because insufficient funds are on deposit in the particular bank when the check is presented for payment, the lessee has not exercised reasonable diligence. Where the lessee provides no evidence that the rental check was dishonored through the fault of someone other than the lessee, there is no basis for reinstatement of the lease. In no case may the lease be reinstated where the rental payment is not tendered within 20 days following the anniversary date of the lease.

Deane A. Dunham, 48 IBLA 7 (May 27, 1980)

A lessee whose oil and gas leases terminated by operation of law for failure to pay rental timely may be found to have exercised "reasonable diligence" in mailing the rental payments on Oct. 29 when they were due on Nov. 1, and the leases should therefore be granted reinstatement.

Poi Energy, Inc., 48 IBLA 197 (June 9, 1980)

The Department is without authority to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within 20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

David Fasken, 48 IBLA 258 (June 26, 1980)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the proper Bureau of Land Management State Office on or before the anniversary date.

There is no authority to reinstate an oil and gas lease automatically terminated by operation of law for failure to pay rental when due if the rental is not tendered or paid within 20 days after the anniversary date of the lease.

Stefan Demsko, 49 IBLA 14 (July 15, 1980)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Hollywood, California, 2 days before it is due in Cheyenne, Wyoming, does not constitute reasonable diligence.

Rose M. Keegel, 49 IBLA 106 (July 28, 1980)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the proper Bureau of Land Management State Office on or before the anniversary date.

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, i.e., due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payment the day it was due does not constitute reasonable diligence.

The postmark date of a rental payment for an oil and gas lease is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark.

Kenneth W. Macek, 49 IBLA 153 (July 30, 1980)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When rental payment for an oil and gas lease was mailed after the date it is due, there was no basis for reinstating the lease because of reasonable diligence.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of the law and regulations and reliance on the insurance business practice of a grace period is not a justifiable excuse.

John J. O'Loughlin, 50 IBLA 50 (Sept. 15, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Coral Springs, Florida, 2 days before it is due in

OIL AND GAS LEASES--ContinuedREINSTATEMENT--Continued

Santa Fe, New Mexico, does not constitute reasonable diligence.

In order for the failure to make timely payment of the rental justifiable, the failure must be caused by factors outside the lessee's control which were the proximate cause of the failure. Traveling away from home during the latter part of September when payment is due October 1 will not justify late payment.

Melvin D. Guttman, 51 IBLA 53 (Oct. 31, 1980)

The applicable statute limits the authority of the Department of the Interior in reinstating leases only to those situations where it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. Reasonable diligence normally requires sending or delivering payment to the proper office sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. Late payment of the rental is justifiable only where failure to make timely payment is the result of causes beyond the control of the lessee, and simple inadvertence in mailing the payment to the wrong office does not justify failure to send timely payment to the proper office.

Monsanto Co., 51 IBLA 271 (Dec. 15, 1980)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Submission of a deficient payment, even though received in advance of the due date, does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. No justifiable excuse arises where a discrepancy as to total acreage exists between the parcel listing and lease, BLM notifies the lessee at his address of record of the correct amount and the notice is returned as not deliverable, and the lessee, relying on the advice of his leasing service and landman, submits the incorrect amount.

Virgil T. Hartquist, 51 IBLA 356 (Dec. 29, 1980)

RENEWALS

Where an applicant for an oil and gas renewal lease under 30 U.S.C. § 223 (1976) requests to be advised of additional requirements but the Bureau of Land Management fails to notify applicant of rent due, failure to submit rental before expiration of existing lease does not mandate denial of the application and 30 U.S.C. § 188 (1976) is not applicable.

Keohane, Inc., et al., 50 IBLA 249 (Sept. 30, 1980)

OIL AND GAS LEASES--ContinuedRENTALS

Under 43 CFR 3130.2-1, rental for noncompetitive oil and gas leases for acquired lands in which the United States owns an undivided fractional interest is payable at the same rate as provided for full acreage leases and not prorated.

Wilfred Flcwis, 45 IBLA 230 (Feb. 4, 1980)

Where an oil and gas lessee pays his annual rental on or before the anniversary date of the lease in accordance with an erroneous bill issued by the Bureau of Land Management, the lease will not automatically terminate unless lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent by ELM. 30 U.S.C. § 188(b) (1976); 43 CFR 3106.2-1(h).

C.S.V. Oil Exploration Co., 45 IBLA 393 (Feb. 13, 1980)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and the right of the next drawee to receive first consideration attaches eo instante.

Zenith S. Merritt, 46 IBLA 24 (Feb. 20, 1980)

A noncompetitive oil and gas lease on which there is no well capable of production automatically terminates by operation of law where the rental payment by the lessee on or before the due date is deficient by more than \$10 or 5 percent.

Tenneco Oil Co., 46 IBLA 33 (Feb. 20, 1980)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

Where the failure to pay rental on or before the anniversary date of a lease is attributable to a computer error in the mailing system, neither reasonable diligence nor justification is shown to support a petition for reinstatement.

Reliance on receipt of a courtesy notice from the Bureau of Land Management does not justify late payment and therefore permit reinstatement of an oil and gas lease terminated for failure to pay rental timely.

Melloune Concert Profit Sharing Trust, Joseph F. Fiato, Carl Gerard, 46 IBLA 87 (Feb. 28, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date

OIL AND GAS LEASES--Continued

RENTALS--Continued

to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Philadelphia, Pennsylvania, 2 days before it is due in Cheyenne, Wyoming, does not constitute reasonable diligence.

43 CFR 3108.2-1(a) requires the lessee "to pay" the rental on or before the due date. This regulation contemplates receipt of the remittance by BLM as the date for paying the rental rather than the date of mailing of the payment or the date on which the payment is postmarked.

In order for the failure to make timely payment of the rental justifiable, the failure must be caused by factors outside the lessee's control which were the proximate cause of the failure. Traveling away from home during the latter part of July when payment is due Aug. 1 will not justify late payment.

Harry Zaslow, 46 IBLA 217 (Mar. 27, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and in delivery of the mail. Mailing the rental in Dallas, Texas, 2 days before it is due across the country in Silver Spring, Maryland, does not constitute reasonable diligence.

Bob W. Scott, 46 IBLA 254 (Mar. 27, 1980)

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976). Where the lessee shows that his failure to pay rental timely is justifiable, he pays the required rental within 20 days after the due date, excluding the normal business days the office is closed due to snowstorms, and he otherwise complies with statutory and regulatory requirements, he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1976).

Western Reserves Oil Co., 46 IBLA 295 (Mar. 31, 1980)

Under 30 U.S.C. § 188(c) (1976), the Secretary of the Interior lacks authority to reinstate an oil and gas lease terminated by operation of law for failure to pay rental timely, unless rental payment is paid within 20 days of the due date.

Assuming arguendo, that the Department had authority otherwise to reinstate a terminated oil and gas lease under 30 U.S.C. § 188(c) (1976), where there has been late payment of rental, it could not do so where reasonable diligence was not shown nor a justifiable excuse given for the failure to exercise such diligence. Generally, a lessee will not be deemed to have exercised reasonable diligence where payment is transmitted after the due date. No justifiable excuse arises where an assignee of the lease relies on the assignor for payment, where a lessee relies on receipt of a courtesy billing notice from the Bureau of Land

OIL AND GAS LEASES--Continued

RENTALS--Continued

Management, or where a lessee was uninformed of the rental payment requirements.

Alice M. Conte, Phyllis Lane Zehr, 46 IBLA 312 (Apr. 4, 1980)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Thomas Connell, 46 IBLA 331 (Apr. 4, 1980)

The automatic termination provision of 30 U.S.C. § 188(b) (1976) is applicable to a lease whose lands formed part of a unit upon which production has at all times been maintained, but were thereafter eliminated therefrom and simultaneously segregated by reason of their inclusion in a second unit, since terminated.

Base Enterprises Production Co., 47 IBLA 53 (Apr. 14, 1980)

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days after the due date.

Administrator of Estate of Valentine M. O'Grady, 47 IBLA 83 (Apr. 21, 1980)

Frank Pursua, 50 IBLA 259 (Sept. 30, 1980)

An oil and gas lease terminated automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank upon which it is drawn, when presented for payment.

An oil and gas lease terminated for nonpayment of rental may be reinstated under 30 U.S.C. § 188(c) (1976) only if the failure to pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Where a lessee submits his rental check timely, but the check is nonnegotiable because insufficient funds are on deposit in the particular bank when the check is presented for payment, the lessee has not exercised reasonable diligence. Where the lessee provides no evidence that the rental check was dishonored through the fault of someone other than the lessee, there is no basis for reinstatement of the lease. In no case may the lease be reinstated where the rental payment is not tendered within 20 days following the anniversary date of the lease.

Deane A. Dunham, 48 IBLA 7 (May 27, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is \$1,863, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for only \$1,836 within the time required, but fails to submit the \$27 deficiency within the allowed time.

Edward Goodman, 48 IBLA 152 (June 9, 1980)

OIL AND GAS LEASES--ContinuedRENTALS--Continued

An oil and gas lease on which there is no well capable of production terminates automatically by operation of law if the lessee pays only 50 percent of the annual rental due on or before the anniversary date of the lease, and where this deficient payment did not result from any incorrect information in a rental bill or decision.

A delay by BLM in notifying an oil and gas lessee that his lease has terminated because he has failed to pay all of the rental due on or before the anniversary date of the lease does not extend the viability of the lease in order to allow him to pay the balance of the rental, as the lease had already terminated automatically by operation of law, without any administrative act, deed, or decision.

David Fasken, 48 IBLA 258 (June 26, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental is due within 15 days from the receipt of notice that such payment is due, the offer will be disqualified under 43 CFR 3112.4-1 when the rental is not received in the proper office within 15 days from the receipt of notice that such payment is due.

Where payment must be accomplished within a specific number of days from receipt of notice, that number includes holidays and weekends which occur in the interim unless it is provided otherwise.

Gordon E. Jacober, 49 IBLA 91 (July 22, 1980)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease.

Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering her leases, and, until such time as it is received, no "payment" of annual rental has occurred. Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when she submits payment to the BLM office administering her leases and when BLM has the opportunity either to receive or decline it.

Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Hollywood, California, 2 days before it is due in Cheyenne, Wyoming, does not constitute reasonable diligence.

Rose M. Keegel, 49 IBLA 106 (July 28, 1980)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease for an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days of receipt of notice that such payment is due.

Earl F. Hartley, 49 IBLA 140 (July 30, 1980)

OIL AND GAS LEASES--ContinuedRENTALS--Continued

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When rental payment for an oil and gas lease was mailed after the date it is due, there was no basis for reinstating the lease because of reasonable diligence.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of the law and regulations and reliance on the insurance business practice of a grace period is not a justifiable excuse.

John J. O'Leughlin, 50 IBLA 50 (Sept. 15, 1980)

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b) (1).

CO2-Id-Action, Inc., 50 IBLA 54 (Sept. 15, 1980)

Where an applicant for an oil and gas renewal lease under 30 U.S.C. § 223 (1976) requests to be advised of additional requirements but the Bureau of Land Management fails to notify applicant of rent due, failure to submit rental before expiration of existing lease does not mandate denial of the application and 30 U.S.C. § 188 (1976) is not applicable.

Keohane, Inc., et al., 50 IBLA 249 (Sept. 30, 1980)

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not, in fact, contain valuable deposits of oil or gas. It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proven barren.

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b) (1).

The Secretary may waive rental requirements on a leasehold in order to encourage the greatest ultimate recovery of oil and gas and in the interest of conservation whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein. 43 CFR 3103.3-7.

SID, 50 IBLA 262 (Sept. 30, 1980)

OIL AND GAS LEASES--ContinuedRENTALS--Continued

The payment of advance rental in connection with an oil and gas lease offer and the acceptance of such payment by the Bureau of Land Management do not create a binding obligation on the Bureau to issue an oil and gas lease.

James Muslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Coral Springs, Florida, 2 days before it is due in Santa Fe, New Mexico, does not constitute reasonable diligence.

In order for the failure to make timely payment of the rental justifiable, the failure must be caused by factors outside the lessee's control which were the proximate cause of the failure. Traveling away from home during the latter part of September when payment is due October 1 will not justify late payment.

Melvin D. Guttman, 51 IBLA 53 (Oct. 31, 1980)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976).

In the event that some of the land applied for in an oil and gas lease offer was unavailable, the applicant was entitled to a refund of excess rental paid, and failure of BLM to return the excess rental to the offeror after the lease issuance and prior to the next annual rental being due and payable does not prevent the lease from terminating by operation of law.

Wilfred Plomis, 51 IBLA 125 (Nov. 20, 1980)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A net credit balance reflected in statements of account covering other leases does not constitute payment of the annual rental for the subject lease, absent a written request, timely received, that monies from a particular account be applied as the rental payment for the lease.

Consolidated Crude Oil Co., 51 IBLA 217 (Dec. 10, 1980)

RIGHTS-OF-WAY LEASES

Lands under reservoir rights-of-way may be leased only under the authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). However, the language of the 1930 Act is construed to mean that it applies only to land actually within the limits of the right-of-way and that the lands in legal subdivisions, exclusive of

OIL AND GAS LEASES--ContinuedRIGHTS-OF-WAY LEASES--Continued

the reservoir right-of-way may be leased under the Mineral Leasing Act of 1920, provided there are no justifiable reasons for refusing to lease them.

E. C. Beveridge, 50 IBLA 173 (Sept. 30, 1980)

ROYALTIES

Where the statute and operating regulations each provide that gas used for production purposes on the leasehold shall be excepted from royalty due the United States, it is error for the Geological Survey to require payment of royalty for gas produced from the Embarras-Tensleep participating area and used in operations in the Madison participating area within the same leasehold under the Elk Basin Unit Agreement.

Amoco Production Co., 45 IBLA 16 (Jan. 8, 1980)

30 CFR 221.21(c) provides that an oil and gas lessee shall drill and produce from such wells as are necessary to protect the lessor from loss of royalty by reason of drainage or pay a sum estimated to reimburse the lessor for such loss of royalty. Where Geological Survey affords the lessee an opportunity to submit evidence as to why a paying well cannot be drilled and the lessee does not submit an adequate response, or drill the well, compensatory royalty is properly assessed.

Inexco Oil Co., 45 IBLA 377 (Feb. 13, 1980)

A Geological Survey Area Supervisor is acting within the authority granted to him by applicable provisions of Indian oil and gas leases and Indian and Federal royalty regulations when he decides to adopt the greater of either 1) actual sales prices of production from the leased lands or 2) a substitute price computed by him which is reasonably based on sales prices from all production from other similar tribal leases in the area, as the "value" of gas produced on these leases, and when he directs lessees to compute royalty based on the greater of the two values so calculated.

Where the Area Supervisor assembles data concerning sales from all Jicarilla tribal leases for a particular year and determines the median sales price, his use of this figure as a minimum floor price by which to determine value will be affirmed, as this decision is within the latitude afforded him, and this price is reasonably based on transactions indicative of the actual value of the production in the area at that time.

A lessee's obligation to pay royalty based on an accurate determination of the current value of production is not mitigated by its having committed by long-term contract to sell this product at a price below this value.

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

The Area Supervisor has the authority to require a lessee to determine the value of the lease product by both the "EPU" and "net-realization" methods and may require the lessee to adopt as value whichever result

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

is higher as the basis for computation of royalty for natural gas.

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so is apparently res judicata, the only question being whether the order is the court's final action.

Under controlling provisions, an Area Supervisor has the discretion to establish a cost-of-manufacture allowance for use in the net-realization method of determining value for royalty purposes. Where this allowance is well based on the actual amounts needed to process out by-products of the crude gas, it will be upheld in the absence of a clear showing that it is erroneous.

Supron Energy Corp. et al., 46 IEIA 181 (Mar. 21, 1980)

When the point of delivery of OCS royalty oil produced under a sec. 8 lease, 43 U.S.C. § 1337 (1976), as amended, 43 U.S.C. § 1337 (Supp. II 1978), is on or immediately adjacent to the leased area, the lessee is not entitled to reimbursement for costs incurred in transporting the royalty oil to such delivery point.

JFD, Inc., 49 IEIA 337 (Aug. 25, 1980)

A Geological Survey decision requiring additional royalties to be paid under oil and gas lease CCS G-1752 will be reversed where such decision rests upon the assumption that a parent corporation can rescind at will a contract for the sale of natural gas entered into with its wholly owned subsidiary, especially where all of the evidence indicates that the agreement does, in fact, represent fair market value and where other Governmental regulatory controls are applicable and the rights of a third party will be affected.

Getty Oil Co., 51 IEIA 47 (Oct. 31, 1980)

The Crude Oil Windfall Profit Tax Act, P.L. 96-223, 94 Stat. 229 (1980) imposes the windfall profit tax on Federal oil royalty revenue. The states have no economic interest, as that phrase is used in the Windfall Profit Tax Act, in Federal royalty revenue that would exempt their share from taxation. Moreover, revenue from the windfall profit tax cannot be treated as royalty revenue and be distributed to the states under sec. 35 of the Mineral Leasing Act, as amended, 30 U.S.C. § 191 (1976). Accordingly, the states' share of Federal oil royalties must be based upon after-tax royalty revenue.

Effect of the Crude Oil Windfall Profit Tax Act of 1980 on the States' Share of Federal Oil Royalties, M-36929 (Dec. 30, 1980) 87 I.L. 661

STIPULATIONS

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

a lease. Where the recommendations to impose stipulations on the lease are based on environmental analysis reports for the Uinta National Forest, special protective stipulations are not unreasonable, per se.

Oil and gas lessees must bear the expenses occasioned by compliance with stipulations for the protection of other land use values.

Diane P. Katz, 47 IEIA 177 (May 7, 1980)

Departmental regulations 43 CFR Subpart 3109 and 3120.2-3, and sec. 603 of the Federal Land Policy and Management Act of 1976 provide ample authority for the Bureau of Land Management to require oil and gas lessees to agree to wilderness protection stipulations.

Emery Energy, Inc., 47 IEIA 284 (May 15, 1980)

The Secretary has broad power to regulate all on-lease activities by oil and gas lessees and operators pursuant to the conditions contained in oil and gas leases and his general regulatory authority under the Mineral Leasing Act. The procedures for regulating activities on oil and gas leases, established under Secretarial Order 2948 and the ELM-USGS Cooperative Procedures Agreement implementing that order, reserve to the Department the authority to protect the United States legal interests in the property. The Secretary has broad discretion either to continue this procedure, or to substitute any other delegation of his authority and any other reasonable regulatory procedure which he concludes would equally protect the United States interests.

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.L. 291

ELM's decision to impose a no-surface occupancy stipulation covering a canyon and creek bed on an oil and gas lease will be affirmed where the record shows that these areas have significant aesthetic values, where much of the balance of the leased lands is apparently suitable for drilling, and where the lessee has previously expressed his willingness to accept the lease subject to designation by ELM of "zones of nondisturbance."

James O. Greene, Jr., 49 IEIA 350 (Aug. 29, 1980)

Where the Bureau of Land Management requests within 30 days the execution of special stipulations prepared by the Forest Service for acquired lands embraced in a noncompetitive oil and gas lease offer, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days.

J. Thomas Lewis, 50 IEIA 350 (Oct. 14, 1980)

Bureau of Land Management decisions rejecting oil and gas lease offers will be set aside and the cases remanded for further consideration where the only basis for the decisions was possible future harm to desert tortoises which are currently under consideration to determine if they should be placed on the endangered species list, and the record demonstrates the decline of the species is due to other reasons, and there has been no determination whether other measures, including protective stipulations in oil and gas leases, could be

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

taken to protect the tortoises while permitting oil and gas exploration and development.

Tucker and Snyder Exploration Co., Inc., et al., 51 IBLA 35 (Oct. 30, 1980)

SUBSURFACE STORAGE

Under sec. 17(j) of the Mineral Leasing Act, the Secretary of the Interior may authorize the subsurface storage of oil and gas in lands leased or subject to leasing under the Act. Any lease on which storage is authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities. A storage agreement which recognizes an existing lease and only reserves to the United States all of the United States interest in minerals in the lands does not terminate the rights of the existing lessee to drill for and produce oil and gas. An oil and gas lease offer submitted subsequently by a third party for the lands subject to the lease is properly rejected since the United States does not hold the mineral interest sought.

American Natural Gas Production Co., 49 IELA 230 (Aug. 12, 1980)

TERMINATION

When an oil and gas lessee submits the amount of rental stated in a bill rendered by an authorized officer and the amount is found to be in error resulting in a deficiency, generally such lease shall not have automatically terminated for failure to pay the annual rental timely and new offers to lease the lands must be rejected.

Lucinda E. Boggs, 45 IBLA 60 (Jan. 14, 1980)

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

A request for extension of a lease terminated by operation of law must be denied. A lease in its extended term because of production can be held only so long as oil and gas in paying quantities is produced.

Robert Hawkins, 45 IELA 105 (Jan. 17, 1980)

Where an oil and gas lessee erroneously transmits a check for the annual rental to the wrong office of the Bureau of Land Management, which office receives the payment 14 days prior to the anniversary date but takes no action either to forward the check to the proper office or return it to the lessee until the anniversary date of the lease, a petition for reinstatement of the terminated lease will be granted when it is established that the negligence of BLM employees was an equally causative factor in the lessee's failure to timely pay the rental.

Richard L. Rosenthal, 45 IBLA 146 (Jan. 23, 1980)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

A State Office properly holds that a noncompetitive oil and gas lease expires at the end of its primary term when there is no cognizable activity on the leased lands as of that date under 30 U.S.C. § 226(e) (1976), and the unit or cooperative provisions of 30 U.S.C. § 226(j) (1976) have not operated to extend the lease.

Dale Carr, 45 IBLA 163 (Jan. 30, 1980)

Where an oil and gas lessee pays his annual rental on or before the anniversary date of the lease in accordance with an erroneous bill issued by the Bureau of Land Management, the lease will not automatically terminate unless lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent by BLM. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(h).

C.S.V. Oil Exploration Co., 45 IELA 393 (Feb. 13, 1980)

A noncompetitive oil and gas lease on which there is no well capable of production automatically terminates by operation of law where the rental payment by the lessee on or before the due date is deficient by more than \$10 or 5 percent.

The Department of the Interior has no authority to reinstate a terminated oil and gas lease where the full rental has not been paid within 20 days after the date of termination.

Tennessee Oil Co., 46 IELA 33 (Feb. 20, 1980)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c) (2).

Where the failure to pay rental on or before the anniversary date of a lease is attributable to a computer error in the mailing system, neither reasonable diligence nor justification is shown to support a petition for reinstatement.

Mellourne Concept Profit Sharing Trust, Joseph E. Fiato, Carl Gerard, 46 IELA 87 (Feb. 28, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Harry Zaslav, 46 IELA 217 (Mar. 27, 1980)

For W. Scott, 46 IBLA 254 (Mar. 27, 1980)

Melvin D. Guttman, 51 IBLA 53 (Oct. 31, 1980)

OIL AND GAS LEASES--ContinuedTERMINATION--Continued

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976). Where the lessee shows that his failure to pay rental timely is justifiable, he pays the required rental within 20 days after the due date, excluding the normal business days the office is closed due to snowstorms, and he otherwise complies with statutory and regulatory requirements, he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1976).

Western Reserves Oil Co., 46 IBLA 295 (Mar. 31, 1980)

The automatic termination provision of 30 U.S.C. § 188(b) (1976) is applicable to a lease whose lands formed part of a unit upon which production has at all times been maintained, but were thereafter eliminated therefrom and simultaneously segregated by reason of their inclusion in a second unit, since terminated.

Bass Enterprises Production Co., 47 IBLA 53 (Apr. 14, 1980)

An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Burton/Hawks, Inc., 47 IBLA 125 (Apr. 29, 1980)

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment on the anniversary date of the lease does not constitute reasonable diligence.

Kenneth and Era Tweten, 47 IBLA 180 (May 7, 1980)

An oil and gas lease terminated automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank upon which it is drawn, when presented for payment.

Deane A. Dunham, 48 IBLA 7 (May 27, 1980)

An oil and gas lease on which there is no well capable of production terminates automatically by operation of law if the lessee pays only 50 percent of the annual rental due on or before the anniversary date of the lease, and where this deficient payment did not result from any incorrect information in a rental bill or decision.

A delay by BLM in notifying an oil and gas lessee that his lease has terminated because he has failed to

OIL AND GAS LEASES--ContinuedTERMINATION--Continued

pay all of the rental due on or before the anniversary date of the lease does not extend the viability of the lease in order to allow him to pay the balance of the rental, as the lease had already terminated automatically by operation of law, without any administrative act, deed, or decision.

The Department is without authority to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within 20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

David Fasken, 48 IBLA 258 (June 26, 1980)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the proper Bureau of Land Management State Office on or before the anniversary date.

Stefan Lemsko, 49 IBLA 14 (July 15, 1980)

Kenneth W. Facek, 49 IBLA 153 (July 30, 1980)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease.

Rose M. Kessel, 49 IBLA 106 (July 28, 1980)

Where oil and gas lessees allege that they have entered into a communitization agreement associating the leased land with adjacent lands on which there is a producing well, but do not so show, and where the record shows that no such agreement was filed for approval with GS prior to the anniversary date of the lease in any event, the lease is not properly regarded as having been in "producing" status on the anniversary date, so that it terminates automatically by operation of law upon the lessees' failure to submit annual rental on or before this date.

Melvin A. Brown, Douglas Bickerstaff, 49 IBLA 234 (Aug. 12, 1980)

Where a unit agreement specifies that a determination as to whether a well completed prior to the effective date of the agreement is capable of producing unitized substances in paying quantities will be deferred until an initial participating area is established as the result of completion of a well for production in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved unit agreement on the last day of the lease term with a bona fide intent to complete a producing well.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

OIL AND GAS LEASES--ContinuedTERMINATION--Continued

An oil and gas lease, which is in its extended term because of production, terminates when production ceases unless pursuant to 30 U.S.C. § 226(f) (1976): (1) reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes; (2) the Secretary has ordered or consented to suspension of operations or production; or (3) for lands on which there is a well capable of production, the lessee places the well in production within 60 days of receipt of notice to do so.

Michael E. Grace, 50 IBLA 150 (Sept. 26, 1980)

Where an applicant for an oil and gas renewal lease under 30 U.S.C. § 223 (1976) requests to be advised of additional requirements but the Bureau of Land Management fails to notify applicant of rent due, failure to submit rental before expiration of existing lease does not mandate denial of the application and 30 U.S.C. § 168 (1976) is not applicable.

Keohane, Inc., et al., 50 IBLA 249 (Sept. 30, 1980)

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days after the due date.

James Valjalo, 50 IBLA 256 (Sept. 30, 1980)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976).

In the event that some of the land applied for in an oil and gas lease offer was unavailable, the applicant was entitled to a refund of excess rental paid, and failure of BLM to return the excess rental to the offeror after the lease issuance and prior to the next annual rental being due and payable does not prevent the lease from terminating by operation of law.

Wilfred Plomis, 51 IBLA 125 (Nov. 20, 1980)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A net credit balance reflected in statements of account covering other leases does not constitute payment of the annual rental for the subject lease, absent a written request, timely received, that monies from a particular account be applied as the rental payment for the lease.

Consolidated Crude Oil Co., 51 IBLA 217 (Dec. 10, 1980)

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the

OIL AND GAS LEASES--ContinuedTERMINATION--Continued

lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

John Swanson, 51 IBLA 239 (Dec. 15, 1980)

The applicable statute limits the authority of the Department of the Interior in reinstating leases only to those situations where it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. Reasonable diligence normally requires sending or delivering payment to the proper office sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. Late payment of the rental is justifiable only where failure to make timely payment is the result of causes beyond the control of the lessee, and simple inadvertence in mailing the payment to the wrong office does not justify failure to send timely payment to the proper office.

Monsanto Co., 51 IBLA 271 (Dec. 15, 1980)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Pursuant to 30 U.S.C. § 188(b) (1976) an oil and gas lease will not automatically terminate when an annual rental payment is deficient if the deficiency is nominal. A deficiency is nominal if it is not more than \$10 or five percent of the total payment due, whichever is more.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Submission of a deficient payment, even though received in advance of the due date, does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. No justifiable excuse arises where a discrepancy as to total acreage exists between the parcel listing and lease, BLM notifies the lessee at his address of record of the correct amount and the notice is returned as not deliverable, and the lessee, relying on the advice of his leasing service and landman, submits the incorrect amount.

Virgil T. Hartquist, 51 IBLA 356 (Dec. 29, 1980)

UNIT AND COOPERATIVE AGREEMENTS

Where the statute and operating regulations each provide that gas used for production purposes on the leasehold shall be excepted from royalty due the United States, it is error for the Geological Survey to require payment of royalty for gas produced from the Embury-Tensleep participating area and used in operations in the Madison participating area within the same leasehold under the Elk Basin Unit Agreement.

Amoco Production Co., 45 IBLA 16 (Jan. 8, 1980)

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

An order by a GS conservation manager directing holders of two adjacent outer continental shelf oil and gas leases covering a single producing geological structure to unitize will be affirmed where the record shows that the producing mechanism of the structure is a gas cap almost wholly under the exclusive control of the holders of one of the leases, and that improper development of gas from this cap would reduce the ultimate recovery of oil and gas from the structure, as the Department has the authority to require unitization in order to conserve the resources of the outer continental shelf under sec. 5(a) of the CCS Lands Act, as amended.

Placid Oil Co. et al., 46 IBLA 392 (Apr. 10, 1980)

The automatic termination provision of 30 U.S.C. § 188(b) (1976) is applicable to a lease whose lands formed part of a unit upon which production has at all times been maintained, but were thereafter eliminated therefrom and simultaneously segregated by reason of their inclusion in a second unit, since terminated.

Bass Enterprises Production Co., 47 IBLA 53 (Apr. 14, 1980)

An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Burton/Hawks, Inc., 47 IBLA 125 (Apr. 29, 1980)

Federal lands included in a unit agreement approved pursuant to 30 CFR Part 226 or a communitization agreement approved pursuant to 43 CFR 3105.2 are treated like an individual oil and gas leasehold for the purpose of determining whether rights-of-way are required for facilities located thereon.

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.D. 291

Where a unit agreement specifies that a determination as to whether a well completed prior to the effective date of the agreement is capable of producing unitized substances in paying quantities will be deferred until an initial participating area is established as the result of completion of a well for production in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved unit agreement on the last day of the lease

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

term with a bona fide intent to complete a producing well.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

The authority to segregate partially unitized oil and gas leases must be clear, since segregation creates two new leases from a single lease and fundamentally modifies a lessee's legal rights and obligations. Such authority will not be presumed or extrapolated from a general grant of regulatory authority.

New OCS Unitization Rules--Authority of the Secretary to Segregate Partially Unitized Offshore Oil and Gas Leases, M-36927 (Dec. 16, 1980) 87 I.D. 616

An order by a Conservation Manager of the Geological Survey directing oil and gas lessees of Outer Continental Shelf lands to subscribe to a unit plan allocating production from a specific reservoir on the basis of original net acre-feet of gas-bearing sand, i.e., the volume of gas-bearing sand in place prior to production of any gas from the reservoir, will be affirmed where such a plan of allocation of production is in common use on CCS lands and it has not been shown that the order is arbitrary or capricious.

Texaco, Inc., Gulf Oil Exploration and Production Co., 51 IBLA 332 (Dec. 29, 1980) 87 I.D. 648

WELL CAPABLE OF PRODUCTION

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

Robert Hawkins, 45 IBLA 105 (Jan. 17, 1980)

An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Burton/Hawks, Inc., 47 IBLA 125 (Apr. 29, 1980)

Where a unit agreement specifies that a determination as to whether a well completed prior to the effective date of the agreement is capable of producing unitized substances in paying quantities will be deferred until an initial participating area is established as the result of completion of a well for production in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

OIL AND GAS LEASES--ContinuedWELL CAPABLE OF PRODUCTION--Continued

An oil and gas lease, which is in its extended term because of production, terminates when production ceases unless pursuant to 30 U.S.C. § 226(f) (1976): (1) reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes; (2) the Secretary has ordered or consented to suspension of operations or production; or (3) for lands on which there is a well capable of production, the lessee places the well in production within 60 days of receipt of notice to do so.

Michael P. Grace, 50 IBLA 150 (Sept. 26, 1980)

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

John Swanson, 51 IBLA 239 (Dec. 15, 1980)

OIL SHALEMINING CLAIMS

The Supreme Court has determined that a finding of present marketability as of Feb. 25, 1920, is not a prerequisite to a determination that oil shale deposits are valuable mineral deposits within the meaning of the general mining laws, and has excepted oil shale claims from the general rules of discovery for mining claims.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED CCCS EAY GRANT LANDSGENERALLY

Under sec. 701(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), wilderness review under sec. 603 of FLPMA is applicable to Oregon and California railroad (O&C) lands only to the extent that it is consistent with the Act of Aug. 28, 1937. The Act requires O&C lands to be managed for permanent forest production. No wilderness review is required where the O&C lands are being managed for commercial timber production.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

The provisions of sec. 603(a), FLPMA, requiring the Secretary to review those roadless areas of 5,000 acres or more having wilderness characteristics does not apply to revested Oregon and California (O&C) Railroad lands classified as timberlands.

Oregon Wilderness Coalition, 45 IBLA 347 (Feb. 7, 1980)

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED CCCS EAY GRANT LANDS--ContinuedTIMBER SALES

Under sec. 701(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), wilderness review under sec. 603 of FLPMA is applicable to Oregon and California railroad (C&C) lands only to the extent that it is consistent with the Act of Aug. 28, 1937. The Act requires C&C lands to be managed for permanent forest production. No wilderness review is required where the C&C lands are being managed for commercial timber production.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

OUTER CONTINENTAL SHELF LANDS ACT

(See also Oil & Gas Leases--if included in this Index.)

GENERALLY

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations, including OCS regulations pertaining to the submittal of production and development plans, have the force and effect of law and are binding on the Department.

Exxon Co., U.S.A., 45 IBLA 313 (Feb. 6, 1980)

The Outer Continental Shelf Lands Act, as amended, 43 U.S.C. §§ 1331-56 (Supp. II 1978), provides the exclusive authority for the development of minerals on the outer continental shelf. Mining claims situated on the outer continental shelf assertedly located pursuant to the placer provisions of the general mining law, 30 U.S.C. §§ 35-36 (1976), must be declared null and void.

Ford MacElvain, 50 IBLA 303 (Oct. 7, 1980)

87 I.L. 478

Apart from control over authorizations to exploit the mineral resources of the CCS, the Department has no authority to regulate activities affecting mineral resources on the CCS.

The National Historic Preservation Act, Outer Continental Shelf Lands Act and National Environmental Policy Act authorize a stipulation which provides that a cultural resource included on or eligible for inclusion on the National Register which is discovered by an OCS lessee as a result of lease operations and which is salvaged, be made reasonably available to recognized scientific or educational institutions for study.

Clarification of Authorities and Responsibilities for Identifying and Protecting Cultural Resources on the Outer Continental Shelf, M-36928 (Nov. 24, 1980)

87 I.L. 593

The legislative history of the CCS Lands Act shows that the Secretary is authorized to modify and incorporate the regulatory provisions of the Mineral Leasing Act, as they existed in 1953 when the CCS Lands Act was passed, into CCS leasing regulations as the circumstances of offshore leasing make appropriate.

The Secretary generally is free to adopt any reasonable regulatory measures which he determines to be necessary and proper to prevent waste, conserve natural resources, protect correlative rights, or carry out the leasing provisions of the CCS Lands Act, regardless of

OUTER CONTINENTAL SHELF LANDS ACT--Continued

GENERALLY--Continued

whether such measures are expressly listed in either that Act or the Mineral Leasing Act.

New OCS Unitization Rules--Authority of the Secretary to Segregate Partially Unitized Offshore Oil and Gas Leases, M-36927 (Dec. 16, 1980) 87 I.D. 616

GEOLOGICAL AND GEOPHYSICAL EXPLORATION

Generally

A deep stratigraphic test, whether drilled on or off a structure believed to hold oil or gas, is a kind of geological exploration. Therefore, the Secretary has the authority to allow prelease on-structure tests under sec. 11 of the Outer Continental Shelf Lands Act.

On-Structure, Deep Stratigraphic Test Wells, M-36922 (Oct. 29, 1980) 87 I.D. 517

Reimbursement

The U.S. Geological Survey must pay permittees reasonable reproduction costs for geological data and information submitted under sec. 26.

Reimbursement for Geological and Geophysical Data and Information: Exxon's Petition to Revise 30 CFR Parts 250, 251, and 252, M-36924 (Nov. 17, 1980) 87 I.D. 563

OIL AND GAS INFORMATION PROGRAM

Reimbursement

The U.S. Geological Survey has a right to look at all of a lessee's geological and geophysical data and information. If it keeps the lessee's copy, it must pay the lessee a reasonable sum for reproduction costs. In certain situations, the Survey must also pay the lessee a reasonable sum for processing geophysical data.

Reimbursement for Geological and Geophysical Data and Information: Exxon's Petition to Revise 30 CFR Parts 250, 251, and 252, M-36924 (Nov. 17, 1980) 87 I.D. 563

Secretary's Access to Data and Information

Sec. 26(a)(1)(A) applies to geological and geophysical data and information only. Other types of data and information are gathered under other sections of the Act.

The Secretary may require permittees to ship data and information to him for review. If he then decides to keep them, he must pay the reimbursement required by sec. 26.

Reimbursement for Geological and Geophysical Data and Information: Exxon's Petition to Revise 30 CFR Parts 250, 251, and 252, M-36924 (Nov. 17, 1980) 87 I.D. 563

OIL AND GAS LEASES

An order by a GS conservation manager directing holders of two adjacent outer continental shelf oil and gas leases covering a single producing geological structure to unitize will be affirmed where the record shows that the producing mechanism of the structure is a gas cap almost wholly under the exclusive control of the holders of one of the leases, and that improper development of gas from this cap would reduce the ultimate recovery of oil and gas from the structure, as the

OUTER CONTINENTAL SHELF LANDS ACT--Continued

OIL AND GAS LEASES--Continued

Department has the authority to require unitization in order to conserve the resources of the outer continental shelf under sec. 5(a) of the CCS Lands Act, as amended.

Elacid Oil Co. et al., 46 IPRA 392 (Apr. 10, 1980)

When the point of delivery of OCS royalty oil produced under a sec. 8 lease, 43 U.S.C. § 1337 (1976), as amended, 43 U.S.C. § 1337 (Supp. II 1978), is or is immediately adjacent to the leased area, the lessee is not entitled to reimbursement for costs incurred in transporting the royalty oil to such delivery point.

JFD, Inc., 49 IPRA 337 (Aug. 25, 1980)

A Geological Survey decision requiring additional royalties to be paid under oil and gas lease CCS G-1752 will be reversed where such decision rests upon the assumption that a parent corporation can rescind at will a contract for the sale of natural gas entered into with its wholly owned subsidiary, especially where all of the evidence indicates that the agreement does, in fact, represent fair market value and where other governmental regulatory controls are applicable and the rights of a third party will be affected.

Getty Oil Co., 51 IPRA 47 (Oct. 31, 1980)

The Secretary's mandate under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq. (Supp. II 1978), to administer and supervise development and production of the oil and gas resources of the CCS could not be accomplished without the authority to require development and production plans from oil and gas lessees in the Gulf of Mexico.

Sec. 25 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1351 (Supp. II 1978) does not deprive the Secretary of authority to require development and production plans for oil and gas leases in the Gulf of Mexico.

Secs. 25(a)(1) and (b) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1351(a)(1) and (b) (Supp. II 1978), exempt oil and gas lessees in the Gulf of Mexico and CCS lessees who have discovered oil or gas in paying quantities at the time of enactment of these sections from submitting development and production plans which meet the requirements of sec. 25 of the Act.

The Secretary need not apply the criteria of sec. 25(c) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1351(c) (Supp. II 1978), which describe the contents of a development and production plan, to lessees in the western Gulf of Mexico if the full range of information required by sec. 25(c) is not necessary for effective administration of the exempted leases.

The submission of environmental reports is not necessary for oil and gas lessees in the Gulf of Mexico except where the environmental information in the report is necessary for a state with an approved coastal zone management plan to make a consistency determination or is necessary for the Secretary to carry out his statutory responsibilities.

No environmental impact statements need be prepared prior to the approval of development and production plans for oil and gas leases in the western Gulf of Mexico.

The Secretary is not required to follow the approval time frames set out in sec. 25(g) and (h) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1351(g) and (h) (Supp. II 1978), when considering development

OUTER CONTINENTAL SHELF LANDS ACT--Continued

OIL AND GAS LEASES--Continued

and production plans submitted by oil and gas lessees in the western Gulf of Mexico.

Oil and gas leases in the western Gulf of Mexico are not exempt from the requirement in sec. 19 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1345 (Supp. II 1978), which provides that the Governor of any affected state and the executive of any affected local government in such state shall have a 60-day period, prior to the approval of a development and production plan for a lessee to submit recommendations to the Secretary.

Oil and gas lessees in the western Gulf of Mexico are not exempt from sec. 5(a)(8) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1334(a)(8) (Supp. II 1978), requiring that lessees comply with air quality standards to the extent that authorized activities significantly affect the air quality of any state.

Western Gulf of Mexico lessees conducting activities for which a Federal license or permit is required and which affect any land use or water use in the coastal zone of a state with an approved state coastal zone management program are not exempt from the federal consistency requirements of sec. 25(d) and (h) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1351(d) and (h) (Supp. II 1978).

Gulf of Mexico Exemption from Section 25 of the Outer Continental Shelf Lands Act, As Amended, M-36923 (Nov. 5, 1980) 87 I.D. 544

The Secretary is authorized to require the prompt and efficient exploration and development of the entire area of each offshore oil and gas lease by § 5 of the OCS Lands Act, various regulations, the terms of each lease, and, in some cases, implied covenants of diligent development.

New OCS Unitization Rules--Authority of the Secretary to Segregate Partially Unitized Offshore Oil and Gas Leases, M-36927 (Dec. 16, 1980) 87 I.D. 616

An order by a Conservation Manager of the Geological Survey directing oil and gas lessees of Outer Continental Shelf lands to subscribe to a unit plan allocating production from a specific reservoir on the basis of original net acre-feet of gas-bearing sand, i.e., the volume of gas-bearing sand in place prior to production of any gas from the reservoir, will be affirmed where such a plan of allocation of production is in common use on CCS lands and it has not been shown that the order is arbitrary or capricious.

Texaco, Inc., Gulf Oil Exploration and Production Co., 51 IBLA 332 (Dec. 29, 1980) 87 I.L. 648

OPERATING PROCEDURES

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations, including OCS regulations pertaining to the submittal of production and development plans, have the force and effect of law and are binding on the Department.

Exxon Co., U.S.A., 45 IBLA 313 (Feb. 6, 1980)

OUTER CONTINENTAL SHELF LANDS ACT--Continued

UNIT PLANS

An order by a GS conservation manager directing holders of two adjacent outer continental shelf oil and gas leases covering a single producing geological structure to unitize will be affirmed where the record shows that the producing mechanism of the structure is a gas cap almost wholly under the exclusive control of the holders of one of the leases, and that improper development of gas from this cap would reduce the ultimate recovery of oil and gas from the structure, as the Department has the authority to require unitization in order to conserve the resources of the outer continental shelf under sec. 5(a) of the OCS Lands Act, as amended.

Placid Oil Co., et al., 46 IBLA 392 (Apr. 10, 1980)

Sec. 5 of the OCS Lands Act implicitly authorizes the Secretary to require compulsory unitization of offshore oil and gas leases.

The Secretary is not authorized to require compulsory segregation of an offshore oil and gas lease when part of it is committed to a unit agreement.

Sec. 5 of the CCS Lands Act of 1953 does not provide the clear authority required to permit segregation of CCS leases, since it neither expressly mentions the power to segregate nor incorporates the segregation authority added to the Mineral Leasing Act in 1954.

The U.S. Geological Survey may not condition its approval of any unit agreement or development plan for an offshore oil and gas lease upon the lessee's consent to segregation.

New CCS Unitization Rules--Authority of the Secretary to Segregate Partially Unitized Offshore Oil and Gas Leases, M-36927 (Dec. 16, 1980) 87 I.L. 616

An order by a Conservation Manager of the Geological Survey directing oil and gas lessees of Outer Continental Shelf lands to subscribe to a unit plan allocating production from a specific reservoir on the basis of original net acre-feet of gas-bearing sand, i.e., the volume of gas-bearing sand in place prior to production of any gas from the reservoir, will be affirmed where such a plan of allocation of production is in common use on OCS lands and it has not been shown that the order is arbitrary or capricious.

Texaco, Inc., Gulf Oil Exploration and Production Co., 51 IBLA 332 (Dec. 29, 1980) 87 I.L. 648

PATENTS OF PUBLIC LANDS

GENERALLY

So long as the legal title to public lands remains in the United States, it has the power, after proper notice and upon adequate hearing, to determine whether a millsite claim is valid, and if it be found invalid, to declare it null and void.

United States of America v. Utah International, Inc., 45 IBLA 73 (Jan. 17, 1980)

Every patent for public lands carries with it an implied affirmation of every fact made prerequisite to its issue. No executive officer of the Government is authorized to reconsider the facts on which it was issued.

Lee F. Williamsen, 48 IBLA 329 (July 3, 1980)

PATENTS OF PUBLIC LANDS--Continued

AMENDMENTS

Where over the course of several decades patented land has been conveyed according to the description in the patent by willing buyers and sellers in "arm's length" transactions, the subsequent grantees of the original entrymen had a duty to identify the land that they were purchasing, and the Government will not amend the patent to substitute other public land simply because the present owner believes, or even proves, that certain of the land settled by the original entryman was misdescribed by him, absent any showing of a basis for equitable relief.

George Val Snow, 46 IBLA 101 (Feb. 29, 1980)

DEPARTMENT OF THE INTERIOR INSTRUCTIONS,
44 L.D. 513 (1916)

The Federal interest retained in an authorized improvement constructed and maintained under principles of Instructions, 44 L.D. 513 (1916), is limited to the improvement itself. The exception for the improvement is inserted in a patent for the purpose of giving public notice that the improvement is there; eliminating the improvement from the conveyance; and for assuring any attendant right of the Federal Government to go onto the land for purposes consistent with its ownership in the improvement.

A notation on the land records of a 44 L.D. 513, interest must be removed, and no reservation of such interest can be included on subsequent patents, when the subject improvement is no longer needed or used for or by the United States.

Doyon, Ltd., 5 ANCAP 77 (Oct. 10, 1980) 87 I.D. 480

EFFECT

Like a patent, the effect of the issuance of a Native allotment, even if issued by mistake or inadvertence, is to transfer the legal title from the United States, and to remove from the jurisdiction of the Department the resolution of disputes concerning rights to the land.

State of Alaska, 45 IBLA 318 (Feb. 6, 1980)

In treating cases similar in all respects to those encountered by the Court in Aguilar v. United States, 474 F. Supp. 840 (1979), the Board will conform to the District Court's directions in that case.

Roy G. Denny, 46 IBLA 273 (Mar. 27, 1980)

In treating cases similar in all respects to those encountered by the court in Aguilar v. United States, 474 F. Supp. 840 (1979), the Board will conform to the District Court's directions in that case. Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for an allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements under the Native Allotment Act, BLM must notify the State of Alaska. The State, if dissatisfied, may either initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Appeals.

Emma Jonathan Northway, 46 IBLA 326 (Apr. 4, 1980)

PATENTS OF PUBLIC LANDS--Continued

EFFECT--Continued

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Applications for land, title to which has passed from the United States by issuance of a legal patent, must be rejected.

Robert Dale Marston et al., 51 IBLA 115 (Nov. 20, 1980)

The effect of the issuance of a patent without a mineral reservation, even if issued by mistake or inadvertence, is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land.

Silver Spot Metals, Inc., 51 IBLA 212 (Dec. 10, 1980)

RESERVATIONS

Interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether scoria is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

A patent of land under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1970), was not generally intended to give the grantee the right to use the land for mineral development, but mineral development was to proceed only under the mineral laws.

The mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1970), includes mineral substances which can be taken from the soil and which have a separate value, including those marketable minerals found at or near the surface, and which have no rare or exceptional character, regardless of whether they are subject to disposition under 30 U.S.C. § 601 (1976) or other existing statutory authority.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Under the Stock-Raising Homestead Act, 43 U.S.C. §§ 291-301 (1970), there is no equitable basis for excluding valuable deposits of scoria from the scope of a Federal mineral reservation although the Government has successfully contended in other cases that common or surface minerals are not included in mineral reservations to the United States, because the rules of construction of private conveyances differ from those which govern Federal grants, and because 30 U.S.C. § 54 (1976) provides compensation for damage to surface owners' crops, improvements and grazing values.

Scoria which is valuable for surfacing roads is a mineral reserved to the United States in patents issued

PATENTS OF PUBLIC LANDS--ContinuedRESERVATIONS--Continued

under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

Language excluding mineral lands which was included in a patent of railroad grant lands does not operate as a mineral reservation or diminish the estate vested in the grantee upon later discovery of minerals in the land. The issuance of a railroad grant lands patent generally constitutes a conclusive determination by the United States of the nonmineral character of the land.

Diane B. Katz, 48 IBLA 118 (May 30, 1980)

A patent issued pursuant to the Homestead Act of May 20, 1862, 43 U.S.C. § 161 (1976), reserving to the United States all coal under the Act of June 22, 1910 (36 Stat. 583) and sodium under the Act of July 17, 1914 (38 Stat. 509) in the lands described by such patent, cannot be construed as reserving to the United States other minerals, such as oil and gas, which are not specifically reserved therein.

Circular 1021, July 21, 1925, instructed the land offices to impress upon a nonmineral application a reservation of those minerals for which the land had been embraced in applications for permit or lease.

Lee E. Williamson, 48 IBLA 329 (July 3, 1980)

PAYMENTS

(See also Accounts--if included in this Index.)

GENERALLY

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1956, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

Supron Energy Corp. et al., 46 IBLA 181 (Mar. 21, 1980)

A sight draft is an acceptable form of remittance to satisfy 43 CFR 3112.2-1(a)(1) governing filing fees for simultaneous oil and gas lease offers.

William E. Jeffers, Jr., 46 IBLA 322 (Apr. 4, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is \$1,863, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for only \$1,836 within the time required, but fails to submit the \$27 deficiency within the allowed time.

Edward Goodman, 48 IBLA 152 (June 9, 1980)

PAYMENTS--ContinuedGENERALLY--Continued

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental is due within 15 days from the receipt of notice that such payment is due, the offer will be disqualified under 43 CFR 3112.4-1 when the rental is not received in the proper office within 15 days from the receipt of notice that such payment is due.

Where payment must be accomplished within a specific number of days from receipt of notice, that number includes holidays and weekends which occur in the interim unless it is provided otherwise.

Gordon E. Jacotier, 49 IBLA 91 (July 22, 1980)

Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering her leases, and, until such time as it is received, no "payment" of annual rental has occurred. Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when she submits payment to the BLM office administering her leases and when BLM has the opportunity either to receive or decline it.

Rose M. Keegel, 49 IBLA 106 (July 26, 1980)

PHOSPHATE LEASES AND PERMITS

(See also Mineral Leasing Act--if included in this Index.)

GENERALLY

When an assignment of a phosphate lease has been approved and there is a controversy as to the validity of the assignment, the Department will not rescind approval of the assignment where no error or irregularity is shown therein, and will maintain the status quo where the parties have instituted litigation to resolve their dispute.

John E. and Elizabeth Archer, 46 IBLA 203 (Mar. 24, 1980)

ROYALTIES

Where the Secretary has decided that production from phosphate leases should be valued in accordance with a particular method and what the value should be, the Board's review authority is limited to determining whether the Geological Survey Area Supervisor who issues orders to the phosphate lessees has properly followed the Secretary's instructions. No hearing is required as a prerequisite to the order.

Where the Department has not formally adopted any methodology for determining the value of production from phosphate leases, but has instead allowed lessees simply to pay royalty based on the minimum value specified in the lease after having advised them that a new method of determining a realistic value was being developed, it may assert that royalty was incorrect even after it has accepted these royalty payments, and may impose the method as approved by the Secretary.

Stauffer Chemical Co. et al., 49 IBLA 381 (Sept. 5, 1980)

POTASSIUM LEASES AND PERMITS

(See also Mineral Leasing Act--if included in this Index.)

GENERALLY

Failure to pay full annual rental on or before the anniversary date for a potassium prospecting permit results in automatic termination of the permit.

Amex Chemical Corp., 45 IBLA 335 (Feb. 6, 1980)

A natural brine containing water and ions of sodium, potassium, calcium, magnesium, and chlorine may be considered a valuable deposit of a sodium compound within the meaning of 30 U.S.C. § 262 (1976) if either of two contingencies occur. First, sodium must be present in sufficient quantity as to be commercially valuable. Second, sodium must be essential to the molecular structure of the valuable mineral.

Land is "known to be valuable" for a mineral subject to the Mineral Leasing Act of Feb. 25, 1920, as amended, when "known conditions at the time [of location] were plainly such as to engender the belief that the land contained mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end." United States v. Southern Pacific Co., 251 U.S. 1, 13-14 (1919); Diamond Coal Co. v. United States, 233 U.S. 236, 239-40 (1914). In determining whether mineral deposits are such as to render their extraction profitable and justify expenditures, extrinsic factors, such as the cost of extraction, processing, transportation, and marketing must be considered.

Where sodium ions are commingled in a brine with calcium, potassium, and chlorine ions and no valuable deposit of a sodium or potassium compound is present, contestees' evaporation of such brine does not violate the Multiple Mineral Development Act, 30 U.S.C. §§ 521-531 (1976).

The Administrative Law Judge gave proper weight to Government testimony in dismissing the Government's contest complaint where the evidence supported a finding of the existence of a sodium-calcium-chloride brine, but did not support a finding that such brine was "known to be valuable" for a Leasing Act mineral.

The existence of a "related product" within the meaning of 30 U.S.C. § 262 (1976) presumes the existence of a valuable sodium compound deposit.

United States v. Levon Bardsley (Trustee), Marlene M. Bardsley, individually and as Administratrix of the Estate of Donald H. Bardsley (Deceased), 45 IBLA 367 (Feb. 7, 1980)

PERMITS

Failure to pay full annual rental on or before the anniversary date for a potassium prospecting permit results in automatic termination of the permit.

Amex Chemical Corp., 45 IBLA 335 (Feb. 6, 1980)

POWERSITE LANDS

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Harold M. Voris, 48 IBLA 206 (June 16, 1980)

PUBLIC LANDS

(See also Accretion, Avulsion, Boundaries, Reliction, Surveys of Public Lands--if included in this Index.)

ADMINISTRATION

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

CLASSIFICATION

Where BLM classifies a 4-acre tract as suitable for disposal under the Small Tract Act, thereby segregating it from acquisition under other public land laws, then grants an individual a lease thereon with option to purchase, pursuant to which the lessee constructs buildings and occupies the tract, the protest and application of an Alaska Native, made for the first time 12 years later, will be rejected, as a matter of law and equity where the Native was claiming 160 acres of different land during the preceding 6 years, and had made no assertion of interest in the small tract, but rather had expressly acknowledged the existence of the leasehold.

Evelyn Alexander, 45 IBLA 28 (Jan. 14, 1980)

JURISDICTION OVER

So long as the legal title to public lands remains in the United States, it has the power, after proper notice and upon adequate hearing, to determine whether a millsite claim is valid, and if it be found invalid, to declare it null and void.

United States of America v. Utah International, Inc., 45 IBLA 73 (Jan. 17, 1980)

LEASES AND PERMITS

A hardrock prospecting permit application is properly rejected where the deed conveying the subject lands to the United States expressly excepts therefrom all minerals and rights thereunder outstanding of record in third parties.

Exxon Corp., 45 IBLA 260 (Feb. 4, 1980)

An airport lease issued under the Act of May 24, 1928, is properly canceled where the lessee fails to use the leased land as a public airport. It is irrelevant that the lessee has been unable to arrange financing for reinitiation of airport service, as the terms of the Act, regulations, and lease require that the lands be used as an airport and provide for no dispensation of this requirement.

Jose Rodriguez, 49 IBLA 258 (Aug. 18, 1980)

PUBLIC RECORDS

(See also Administrative Procedure, Confidential Information--if included in this Index.)

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice, and applications for such land must be rejected.

Robert Dale Marston et al., 51 IBLA 115 (Nov. 20, 1980)

PUBLIC SALESPREFERENCE RIGHTS

An assertion of a preference right to purchase public land offered for public sale pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 82 Stat. 870 (43 U.S.C. §§ 1431-1435 (1976)) (now covered by the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701, 1722 (1976)), is improperly rejected when the applicant submits satisfactory equitable proof of his "ownership" of contiguous lands by showing that he has contracted to purchase such land, has made at least partial payment therefor, and is in possession thereof.

J. Burton Tuttle, 49 IBLA 278 (Aug. 18, 1980)
87 I.D. 350

RAILROAD GRANT LANDS

Language excluding mineral lands which was included in a patent of railroad grant lands does not operate as a mineral reservation or diminish the estate vested in the grantee upon later discovery of minerals in the land. The issuance of a railroad grant lands patent generally constitutes a conclusive determination by the United States of the nonmineral character of the land.

A noncompetitive oil and gas lease offer for lands patented under a railroad land grant must be rejected because the United States does not own the mineral deposits in the lands.

Diane E. Katz, 48 IBLA 118 (May 30, 1980)

RECLAMATION LANDS

(See also Irrigation Claims, Rights-of-Way--if included in this Index.)

GENERALLY

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Water and Power Resources Service has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Florence Ackisson, 47 IBLA 121 (Apr. 28, 1980)

RECREATION AND PUBLIC PURPOSES ACT

The rejection of an application for a lease under the Recreation and Public Purposes Act for land to be used as a rifle range is a proper exercise of the Secretary's discretion where the facts show that size and topography of the land are not suitable for such range and the site is not safe, notwithstanding the fact that

RECREATION AND PUBLIC PURPOSES ACT--Continued

the land had been classified for lease under the Recreation and Public Purposes Act.

Town of Krennling, 46 IEIA 213 (Mar. 27, 1980)

REGULATIONS

(See also Administrative Procedure--if included in this Index.)

GENERALLY

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Willene Minnier, 45 IEIA 1 (Jan. 8, 1980)

Robert W. Hansen, Federal Bentonite Co., 46 IEIA 93 (Feb. 28, 1980)

M. E. Rogers, 47 IEIA 196 (May 7, 1980)

Floyd Zaiger, 47 IBLA 204 (May 7, 1980)

Edwin Forstberg, 47 IEIA 235 (May 13, 1980)

Roy Tremayne, 47 IEIA 289 (May 15, 1980)

William J. Walker, Lewis Sandberg, 47 IEIA 389 (May 22, 1980)

Faul E. Rhodes, 48 IEIA 90 (May 29, 1980)

Helen E. Wallace, 48 IBLA 127 (May 30, 1980)

James E. Cooper, 48 IEIA 175 (June 9, 1980)

A. J. Grady, 48 IEIA 218 (June 16, 1980)

Joe Ropic, 48 IBLA 255 (June 26, 1980)

Morrill A. Nielson, 48 IEIA 398 (July 11, 1980)

Rose M. Keegel, 49 IEIA 106 (July 28, 1980)

Ross Weaver, 49 IEIA 111 (July 28, 1980)

Glen Hocking, 49 IEIA 217 (Aug. 11, 1980)

Margaret J. Wilson, 49 IEIA 228 (Aug. 12, 1980)

Nila Tyrrrel, 49 IEIA 267 (Aug. 18, 1980)

Tod Anderson, 50 IBLA 66 (Sept. 17, 1980)

Michael Jon McFarland, 51 IEIA 173 (Nov. 26, 1980)

Edward W. Kramer, 51 IBLA 294 (Dec. 17, 1980)

Robert W. Miller, Marjorie Eiffer Miller, 51 IEIA 364 (Dec. 29, 1980)

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations, including CCS regulations pertaining to the submittal of production and development plans, have the force and effect of law and are binding on the Department.

Exxon Co., U.S.A., 45 IEIA 313 (Feb. 6, 1980)

REGULATIONS--ContinuedGENERALLY--Continued

Where it benefits the affected party to do so, and where there are no intervening rights which will be adversely affected, a mining claim recordation regulation which is amended while the matter is pending may be applied in its amended form.

James E. Strong, 45 IBLA 386 (Feb. 13, 1980)

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations.

Phyllis Wood et al., 46 IBLA 309 (Apr. 4, 1980)

Ray F. Coffee, 47 IBLA 217 (May 13, 1980)

Robert Alameda et al., 48 IBLA 178 (June 9, 1980)

Lawrence Jacob, Freeda Jacob, 49 IBLA 137 (July 28, 1980)

George Stillman, 49 IBLA 150 (July 30, 1980)

Brewery Hill Mining Co., Inc., 49 IBLA 197 (Aug. 6, 1980)

Clayton H. Read, Gerald A. Myres, 49 IBLA 271 (Aug. 18, 1980)

John J. O'Loughlin, 50 IBLA 50 (Sept. 15, 1980)

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations regardless of their actual knowledge of what is contained in such statutes and regulations.

Eric Murray, 47 IBLA 112 (Apr. 28, 1980)

All persons dealing with the Government are presumed to have knowledge of statutes and duly promulgated regulations.

Beth Mallory, 47 IBLA 296 (May 19, 1980)

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations.

Kenneth K. Parker, 48 IBLA 129 (May 30, 1980)

Don and Mary L. Clark, 49 IBLA 11 (July 15, 1980)

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

Alfred Letcher, 49 IBLA 193 (Aug. 6, 1980)

John Lincoln, Jr., 49 IBLA 335 (Aug. 25, 1980)

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

Santa Monica Hospital Medical Center Foundation, 51 IBLA 194 (Dec. 5, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

John F. Sherwood, 48 IBLA 180 (June 9, 1980)

Armando Majalca, 48 IBLA 351 (July 11, 1980)

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REGULATIONS--ContinuedGENERALLY--Continued

Vernon G. & Shirley S. Wickham, 50 IBLA 1 (Sept. 5, 1980)

Where a bidder submits with his bid one-fifth of the amount due in the form of a personal money order payable to the Bureau of Land Management pursuant to the provisions of the applicable regulation, 43 CFR 3120.1-4(b), and statements on the sale notice allowing money orders, his bid may not be rejected for not being in conformity with the intent of the regulations.

Ross L. Kinnaman, 48 IBLA 239 (June 17, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations regardless of their actual knowledge of what is contained in such regulations or statutes.

George L. Harrison, 49 IBLA 157 (July 30, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

Hugh A. Johnson, 50 IBLA 47 (Sept. 9, 1980)

John F. Schmelzer, 51 IBLA 188 (Dec. 2, 1980)

Those who deal with the Government are presumed to have knowledge of the law and regulations duly adopted pursuant thereto.

Don Sagosen, Perry Adkison, Ward I. Jones, 50 IBLA 84 (Sept. 17, 1980)

An amended regulation restricting transfer of oil and gas interests governs where an offeror has not sought approval of a transfer of a pending offer to lease and lease (if issued) prior to June 16, 1980, the effective date of the amendment. Accordingly, under this regulation, BLM cannot consider any application for approval of such a transfer until after issuance of the lease.

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

APPLICABILITY

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1973, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations amended in 1976 with retroactive effect. However, where the application is summarily rejected solely for the reason that the applicant's supplemental submission is "inadequate," without identifying the deficiency, the decision will be vacated and the case remanded for readjudication.

Kim-Ark Corp., 45 IBLA 159 (Jan. 23, 1980) 87 I.L. 14

REGULATIONS--ContinuedAPPLICABILITY--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all non-competitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Thomas Scnnell, 46 IBLA 331 (Apr. 4, 1980)

BLM properly applied the regulations set forth in 43 CFR Subparts 3520-21, effective May 7, 1976, to preference right lease applications pending on the effective date of such regulations.

John S. Wold, Eugene V. Simons, 48 IBLA 106 (May 30, 1980)

BLM properly applied amended regulations, the effective date for which is June 16, 1980, to a drawing of simultaneous noncompetitive lease offers held in July 1980.

Federal Energy Corp., 51 IBLA 144 (Nov. 24, 1980)

BINDING ON THE SECRETARY

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations, including OCS regulations pertaining to the submittal of production and development plans, have the force and effect of law and are binding on the Department.

Exxon Co., U.S.A., 45 IBLA 313 (Feb. 6, 1980)

The Secretary of the Interior is bound by his duly promulgated regulations, and such regulations have the force and effect of law.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

Geosearch, Inc., 48 IBLA 333 (July 3, 1980)

Geosearch, Inc., 49 IBLA 19 (July 15, 1980)

Geosearch, Inc., 50 IBLA 347 (Oct. 14, 1980)

The Department of the Interior, as an agency of the Executive Branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

The Boards of Appeals of the Department of the Interior do not have the authority to declare a duly promulgated regulation invalid.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

FORCE AND EFFECT AS LAW

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations, including OCS regulations pertaining to the submittal of production and development plans, have the force and effect of law and are binding on the Department.

Exxon Co., U.S.A., 45 IBLA 313 (Feb. 6, 1980)

REGULATIONS--ContinuedFORCE AND EFFECT AS LAW--Continued

The Secretary of the Interior is bound by his duly promulgated regulations, and such regulations have the force and effect of law.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

Geosearch, Inc., 48 IBLA 333 (July 3, 1980)

Geosearch, Inc., 49 IBLA 19 (July 15, 1980)

Geosearch, Inc., 50 IBLA 347 (Oct. 14, 1980)

The Department of the Interior, as an agency of the Executive Branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

The Boards of Appeals of the Department of the Interior do not have the authority to declare a duly promulgated regulation invalid.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

INTERPRETATION

Where it benefits the affected party to do so, and where there are no intervening rights which will be adversely affected, a mining claim reclamation regulation which is amended while the matter is pending may be applied in its amended form.

James E. Strong, 45 IBLA 386 (Feb. 13, 1980)

Where an oil and gas lease has inadvertently been issued for land, part of which was the subject of a forest exchange application, the cancellation of that part of the lease will be reversed if the exchange application did not include the mineral estate and has been withdrawn by the proponent, and no other obstacle or objection to the lease exists.

Kerr-McGee Corp., 46 IBLA 156 (Mar. 19, 1980)

When an offeror prints her name on the front of a drawing entry card oil and gas lease offer as "Feagan, Wavis K.," and signs her name on the back of the card as "Kay Reagan," the card may not be rejected because she violated no regulation by signing the offer in that manner, and she properly followed instructions on the face of the card by inserting her full name, last name first, then first name and initial.

Clarisse G. Ferrell, 49 IBLA 275 (Aug. 18, 1980)

An assertion of a preference right to purchase public land offered for public sale pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 82 Stat. 870 (43 U.S.C. §§ 1431-1435 (1976)) (now covered by the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701, 1722 (1976)), is improperly rejected when the applicant submits satisfactory equitable proof of his "ownership" of contiguous lands by showing that he has contracted to purchase such land, has made at least partial payment therefor, and is in possession thereof.

J. Furton Tuttle, 49 IBLA 278 (Aug. 18, 1980)

87 I.L. 350

REGULATIONS--ContinuedWAIVER

Even if it be established that the Department had not applied in previous years regulation 43 CFR 4115.2-1(e) (8) (1975), which requires termination of grazing privileges upon loss of ownership or control of base property, such failure to apply the regulation is not authority to further disregard the regulation.

Jimmie and Leona Ferrara, 47 IBLA 335 (May 21, 1980)

REINSTATEMENTGENERALLY

When an oil and gas lessee submits the amount of rental stated in a bill rendered by an authorized officer and the amount is found to be in error resulting in a deficiency, generally such lease shall not have automatically terminated for failure to pay the annual rental timely and new offers to lease the lands must be rejected.

Lucinda E. Boggs, 45 IBLA 60 (Jan. 14, 1980)

RENT

Idaho Economically Homogeneous Area survey failed to conform to 5 U.S.C. § 5911 (1976) and implementing regulations when values from urban and rural areas were averaged to reach rental values for an entire state without regard to difference in rents between cities and rural or small town localities. The rental rate figures derived from mere averaging of values does not result in reasonable values required by law.

Duane M. Edverson, D-79-9 (Mar. 3, 1980)

The automatic termination provision of 30 U.S.C. § 188(b) (1976) is applicable to a lease whose lands formed part of a unit upon which production has at all times been maintained, but were thereafter eliminated therefrom and simultaneously segregated by reason of their inclusion in a second unit, since terminated.

Bass Enterprises Production Co., 47 IBLA 53 (Apr. 14, 1980)

Pursuant to 5 U.S.C. § 5911 (1976), the appraisal of Government-furnished quarters at the Polacca Day School, Hopi Indian Agency, by the Bureau of Indian Affairs, Phoenix Area Office, and the resulting adjustment of basic rental rates were based upon the reasonable value of the quarters to the employees in the circumstances under which provided, occupied, or made available.

Daniel L. Clavio, 4 OHA 54 (Sept. 11, 1980)

REORGANIZATION PLANS

There is no authority pursuant to which a pro rata or set-off formula can be read into 43 CFR 3503.3-1.

REORGANIZATION PLANS--Continued

Nor do the regulations require ELM to accept all tenders of rental against an anticipated unavailability of some or all of the lands included in a hardrock prospecting application, which may or may not materialize. In the event that some or all of the lands applied for are unavailable, the applicant's remedy is a refund of excess rental paid, and not a set-off against deficiencies.

Duval Corp., Amax Exploration, Inc., 45 IEIA 355 (Feb. 7, 1980)

RES JUDICATA

A decision in 1959 withdrawing charges of lack of discovery is not res judicata as to subsequent inquiry. The earlier decision merely established that claimants' possessory interest in claims had not been extinguished by Act of May 27, 1955, 69 Stat. 67, withdrawing lands from all forms of mining activity. Unless and until patent issues, title to the claims in controversy remains in the United States, and it may inquire into the extent and validity of rights claimed against it.

United States v. Richard G. Clewans et al., 45 IEIA 64 (Jan. 17, 1980)

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so is apparently res judicata, the only question being whether the order is the court's final action.

Supron Energy Corp. et al., 46 IEIA 181 (Mar. 21, 1980)

Where an individual is named as an "adverse party" in a ELM decision which is favorable to that person, who then is duly served with copies of a notice of appeal and statement of reasons challenging the validity of ELM's decision before the Board of Land Appeals and seeking reversal of that decision, but decides not to participate in the appellate proceedings before the Board, the matter becomes res judicata upon the rendering of the Board's decision, and the party may not subsequently challenge this decision by filing a new appeal of his own before the Board for readjudication of the same matter.

Ronald W. Coyer, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (Ct. Judicial Panel), 50 IEIA 306 (Oct. 14, 1980)

RIGHTS-OF-WAY

(See also Indian Lands, Reclamation Lands--if included in this Index.)

GENERALLY

Public Land Order No. 2676 (1962), requires the approval of an authorized officer of the Department of the Army before the Secretary of the Interior can grant a right-of-way over lands subject to the public land order. The Department of the Interior has no authority to grant a right-of-way where the approval is withheld.

In reviewing a decision to grant a right-of-way based upon an environmental analysis report, the decision will be upheld where the record evidences consideration of all available information and a reasoned

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

analysis of the factors involved, made in due regard for the public interest.

City of Anchorage, Alaska, and Jack G. Fisher, et al., a.k.a. Concerned Chugach Citizens v. Chugach Electric Ass'n, Inc., 45 IBIA 171 (Jan. 30, 1980) 87 I.D. 21

The grant of a right-of-way over public lands, authorizing the construction of a roadway involving some 6 acres of public lands in an area of approximately 5,700 acres, does not require the preparation of an environmental impact statement, as no major federal action is present within the terms of 42 U.S.C. § 4332(c) (1976).

Oregon Wilderness Coalition, 45 IBIA 347 (Feb. 7, 1980)

The Bureau of Land Management can recover the full cost of providing a service to an identifiable beneficiary regardless of the incidental public benefits flowing from that service. Charges may be made for environmental studies deemed appropriate for the proper consideration of the application.

Recognizing the principle of stare decisis, the Board nevertheless declines to follow a decision of the same district court involving the same statute where a circuit court decision, although arising under a different statute, is of more recent vintage, takes specific cognizance of the district court decision, and the circuit court decision comports with Departmental policies.

A pending right-of-way application does not create any vested right in the applicant; therefore, the application is subject to the regulations in effect when it is adjudicated.

Management overhead costs are not recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Colorado-Ute Electric Ass'n, Inc., 46 IBIA 35 (Feb. 20, 1980)

Appraisals of rights-of-way for communication sites will be upheld where an appellant fails to demonstrate by convincing evidence that the appraisal methods used by the Bureau of Land Management are in error or that the charges are excessive.

Pursuant to 43 CFR 2802.1-7(3) increased charges may not be imposed retroactively, but are only to be imposed by the authorized officer after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

A grantee of a communications site right-of-way is properly held in default and his right-of-way is properly cancelled pursuant to 43 CFR 2802.1-7(d) where grantee has failed to pay proper amount of rental for 4 years.

James W. Smith, 46 IBIA 233 (Mar. 27, 1980)

Where the bases of decisions rejecting rights-of-way applications for domestic water facility are contradicted by the Environmental Analysis Report on the project and alternatives enumerated therein, and where BLM failed to consider possible mitigating actions suggested by appellant, the decisions will be vacated and remanded for further consideration.

East Canyon Irrigation Co., 47 IBIA 155 (May 6, 1980)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

The comparable lease method of appraisal of communication sites, which compares rental data from comparable leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

E. E. Service, Inc., 48 IBIA 233 (June 17, 1980)

Northwestern Colorado Broadcasting Co., 49 IBIA 23 (July 15, 1980)

The grant of a right-of-way over public lands, authorizing the construction of a roadway to provide access to a uranium mining property, where such grant is made contingent upon the necessary licenses being obtained prior to commencement of any mining activity, does not require the preparation of an environmental impact statement, as no major Federal action is present within the terms of 42 U.S.C. § 4332(c) (1976).

James I. Thompson, 51 IBIA 154 (Nov. 26, 1980)

ACT OF FEBRUARY 15, 1901

A decision rejecting an application for an access road and canal right-of-way will be affirmed when the record shows that the appellant has failed to file a statement of the proper State official, or other evidence showing that he has a right to the use of the water.

Andrew A. Harrower, 51 IBIA 390 (Dec. 31, 1980)

ACT OF FEBRUARY 25, 1920

Sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), is not applicable to on-lease oil and gas production facilities which are included in a surface use and operations plan, and which are authorized by the approval of an application to conduct leasehold operations or construction activities.

Federal lands included in a unit agreement approved pursuant to 30 CFR Part 226 or a communitization agreement approved pursuant to 43 CFR 3105.2 are treated like an individual oil and gas leasehold for the purpose of determining whether rights-of-way are required for facilities located thereon.

Sec. 29 of the Mineral Leasing Act of 1920, 30 U.S.C. § 186 (1976), has consistently been interpreted as not providing authority separate from sec. 28 of the Mineral Leasing Act, 30 U.S.C. § 185 (1976), for oil and gas pipeline rights-of-way. Instead, it reserves to the United States the right to allow other rights-of-way or to lease other minerals on Federal land already leased for the extraction of one mineral, and allows the reservation of the right to dispose of the surface of land leased for mineral extraction "insofar as said surface is not necessary to the use of the lessee in extracting and removing deposits thereon."

All facilities related to an oil and gas lease which are located on Federal land outside the lease, regardless of their nature, may be constructed only after appropriate rights-of-way have been granted. Similarly, on-lease oil and gas transportation facilities and on-lease commercial facilities require

RIGHTS-OF-WAY--Continued

ACT OF FEBRUARY 25, 1920--Continued

rights-of-way. Depending on the nature of the facility, the right-of-way would be granted pursuant to either sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), or Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976).

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.D. 291

APPLICATIONS

The Bureau of Land Management can recover the full cost of providing a service to an identifiable beneficiary regardless of the incidental public benefits flowing from that service. Charges may be made for environmental studies deemed appropriate for the proper consideration of the application.

Recognizing the principle of stare decisis, the Board nevertheless declines to follow a decision of the same district court involving the same statute where a circuit court decision, although arising under a different statute, is of more recent vintage, takes specific cognizance of the district court decision, and the circuit court decision comports with Departmental policies.

A pending right-of-way application does not create any vested right in the applicant; therefore, the application is subject to the regulations in effect when it is adjudicated.

Management overhead costs are not recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Colorado-Ute Electric Ass'n, Inc., 46 IBIA 35 (Feb. 20, 1980)

The repeal of sec. 704(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2792, of certain statutory authority to reserve land as a waterhole only prohibits future withdrawals or reservations of land under the repealed statutes and does not affect known waterholes withdrawn prior to the repeal. It was proper for the Bureau of Land Management to reject a water pipeline right-of-way application for land containing a waterhole which was withdrawn prior to the Federal Land Policy and Management Act of 1976, and where the water is needed for a public use.

Grant L. Hacking, 50 IBIA 154 (Sept. 30, 1980)

The Federal Land Policy and Management Act of 1976 authorizes the Bureau of Land Management to recover reasonable costs including costs of environmental analyses for applications of rights-of-way across public lands.

Costs not directly associated with the processing or monitoring of a right-of-way application, such as evaluation of the mine to be served by the rights-of-way, are not authorized by the Federal Land Policy and Management Act of 1976 and are not reimbursable pursuant to 43 CFR 2802.1-2.

Management overhead costs are not recoverable from right-of-way applicants under 43 CFR 2802.1-2.

U.S. Steel Corp., 50 IBIA 190 (Sept. 30, 1980) 87 I.D. 473

RIGHTS-OF-WAY--Continued

APPLICATIONS--Continued

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

Department of the Army, Corps of Engineers, 51 IBIA 26 (Oct. 28, 1980)

A decision rejecting an application for an access road and canal right-of-way will be affirmed when the record shows that the appellant has failed to file a statement of the proper State official, or other evidence showing that he has a right to the use of the water.

Andrew A. Haricwer, 51 IBIA 390 (Dec. 31, 1980)

CONDITIONS AND LIMITATIONS

An applicant for a right-of-way for a municipal water-supply reservoir may be required to open both this reservoir and another reservoir built pursuant to an earlier right-of-way grant to restricted public access as a condition to receiving the present grant, where the record shows that doing so is in the public interest and will not unduly burden the use of the lands as a water-supply reservoir.

The Department may require an applicant for a right-of-way for a municipal water-supply reservoir to open all parts of this reservoir and another reservoir built pursuant to an earlier right-of-way grant to restricted public access, including the portion thereof not located on Federal lands, as a condition precedent to granting the right-of-way, provided that so doing is in the public interest and will not unduly burden the use of the land as a water-supply reservoir.

FIM may properly require an applicant for a right-of-way for a municipal water-supply reservoir which will inundate Federal lands to bear the cost of mitigating damage to archaeological sites located thereon.

Ute Water Conservancy District, 47 IBIA 71 (Apr. 21, 1980)

FEDERAL HIGHWAY ACT

Mining claims located on lands subject to valid, ongoing, and pre-existing rights-of-way granted to the State of Idaho pursuant to the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), to use the lands for materials for highway construction, are null and void ab initio.

James F. Fercom, Wayne A. Reddekoff, 50 IBIA 414 (Oct. 24, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

Public Land Order No. 2676 (1962), requires the approval of an authorized officer of the Department of the Army before the Secretary of the Interior can grant a right-of-way over lands subject to the public land order. The Department of the Interior has no authority to grant a right-of-way where the approval is withheld.

City of Anchorage, Alaska, and Jack G. Fisher, et al., a.k.a. Concerned Chugach Citizens v. Chugach Electric Ass'n, Inc., 45 IBIA 171 (Jan. 30, 1980) 87 I.D. 21

RIGHTS-OF-WAY--ContinuedFEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

All facilities related to an oil and gas lease which are located on Federal land outside the lease, regardless of their nature, may be constructed only after appropriate rights-of-way have been granted. Similarly, on-lease oil and gas transportation facilities and on-lease commercial facilities require rights-of-way. Depending on the nature of the facility, the right-of-way would be granted pursuant to either sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), or Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976).

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.L. 291

The Federal Land Policy and Management Act of 1976 authorizes the Bureau of Land Management to recover reasonable costs including costs of environmental analyses for applications of rights-of-way across public lands.

Costs not directly associated with the processing or monitoring of a right-of-way application, such as evaluation of the mine to be served by the rights-of-way, are not authorized by the Federal Land Policy and Management Act of 1976 and are not reimbursable pursuant to 43 CFR 2802.1-2.

U.S. Steel Corp., 50 IBLA 190 (Sept. 30, 1980) 87 I.L. 473

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

Department of the Army, Corps of Engineers, 51 IBLA 26 (Oct. 28, 1980)

A decision rejecting an application for an access road and canal right-of-way will be affirmed when the record shows that the appellant has failed to file a statement of the proper State official, or other evidence showing that he has a right to the use of the water.

Andrew A. Harrower, 51 IBLA 390 (Dec. 31, 1980)

NATURE OF INTEREST GRANTED

In granting a right-of-way over public lands pursuant to the Federal Aid Highway Act of 1958, 23 U.S.C. § 317 (1976), the Secretary of the Interior does not give up administrative authority over the lands subject to the right-of-way. Subsequent issuance of a patent for lands encompassing a Federally granted right-of-way issued under the Federal Aid Highway Act, supra, does not change the Secretary's jurisdiction over the right-of-way grant.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

RULES OF PRACTICE

(See also Administrative Procedure, Appeals, Contests & Protests, Contracts, Hearings, Indian Practice, Practice Before the Department--if included in this Index.)

GENERALLY

Certified mailing is an acceptable form of service under Department practice. 43 CFR 1821.2-4. Sending land classification proposals and decisions to a petitioner-applicant by certified mail meets the requirements in 43 CFR 2450.3 and 2450.4 that those documents be served on the petitioner-applicant.

Elbert G. Scerwine, Jr., 50 IBLA 15 (Sept. 9, 1980)

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Lite Sabin, 51 IBLA 226 (Dec. 15, 1980) 87 I.L. 610

APPEALSGenerally

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing will be denied as well as his request for further suspension of the case.

Jack Zuckerman, 45 IBLA 337 (Feb. 7, 1980)

Where, in a decision holding a Native allotment for approval and a State selection for rejection to the extent of a conflict, the Bureau of Land Management grants the State 30 days to initiate a private contest challenging the Native allotment, the 30-day appeal period will commence upon expiration of the 30 days accorded the State for initiation of a private contest and not with receipt of the decision.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska v. Earl C. Patterson, 46 IBLA 56 (Feb. 22, 1980)

State of Alaska, 48 IBLA 229 (June 17, 1980)

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey or the Bureau of Land Management to determine whether such Secretarial

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedGenerally--Continued

regulations, orders, or policies have been correctly implemented.

Bass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

Where the Secretary has decided that production from phosphate leases should be valued in accordance with a particular method and what the value should be, the Board's review authority is limited to determining whether the Geological Survey Area Supervisor who issues orders to the phosphate lessees has properly followed the Secretary's instructions. No hearing is required as a prerequisite to the order.

Stauffer Chemical Co. et al., 49 IBLA 381 (Sept. 5, 1980)

Where Geological Survey has not yet taken any adverse action on a coal lessee's request under 43 CFR 3473.3-2(d) to reduce royalty due on a coal lease, it is premature for the Board of Land Appeals to consider whether such reduction is appropriate. Rather, the lessee must wait for GS to take action and then, if it is adverse, it may pursue its appeal through normal procedures.

Garland Coal & Mining Co., 49 IBLA 400 (Sept. 5, 1980)

Where the State of Alaska lacks a cognizable interest in the specific land being sought by a Native allotment applicant because that land is either within the core township of a Native village or the Native village has received tentative approval for its selection, the State does not have standing to initiate a private contest under 43 CFR 4.450-1. It may, however, protest against the allowance of the allotment and appeal from an adverse decision under 43 CFR 4.410.

State of Alaska v. Steve Sarakovikoff et al., 50 IBLA 284 (Oct. 6, 1980)

Where an individual is named as an "adverse party" in a BLM decision which is favorable to that person, who then is duly served with copies of a notice of appeal and statement of reasons challenging the validity of BLM's decision before the Board of Land Appeals and seeking reversal of that decision, but decides not to participate in the appellate proceedings before the Board, the matter becomes res judicata upon the rendering of the Board's decision, and the party may not subsequently challenge this decision by filing a new appeal of his own before the Board for readjudication of the same matter.

Donald W. Cover, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

Where, on appeal, an oil and gas lessee submits evidence disputing a decision of the Geological Survey that the land embraced by his lease is not on a known geologic structure of a producing oil or gas field, and there is no basis in the record to support the Geological Survey's conclusion, a decision increasing the annual rental should be set aside and the case remanded for consideration by BLM of appellant's contentions.

Robert L. Haynie et al., 51 IBLA 1 (Oct. 28, 1980)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedBurden of Proof

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Hyatt Lake Homeowners Ass'n, 48 IBLA 159 (June 9, 1980)

The assertion that annual assessment work has not been performed is the assertion of a negative fact. If an examination of the mining claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence to this effect would be sufficient to establish a prima facie case. It would then devolve upon the claimant to show by a preponderance of the countervailing evidence that he has substantially complied with the statute.

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

United States v. Catlin Fohme et al., United States v. Exxon Corp. et al., United States v. Adakelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.L. 248

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Pert N. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

In a Government contest of a mining claim for which an application for patent has been filed, the Government assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that the claims are valid. A claimant establishes the validity of his claims by a preponderance of the evidence where the claimant's witness, testifying to the validity of the contested claims, is found to be more credible.

United States v. Cornelius E. Mannix, 50 IBLA 110 (Sept. 24, 1980)

The burden of proof as to the character of land applied for under the Swamp Land Acts falls upon the applicant.

State of California, Stockdale Development Corp., 51 IBLA 3 (Oct. 28, 1980)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedDismissal

The Board of Land Appeals will reverse a decision of the Geological Survey dismissing an appeal for failure to timely file an appeal within the time required by 30 CFR Part 290, from letter decisions assessing compensatory royalty in which no right of appeal was indicated, where appellant responded to the letter decisions and filed a timely notice of appeal to a subsequent decision issued by Geological Survey in which appellant was notified of its right to appeal.

Inexco Oil Co., 45 IBLA 377 (Feb. 13, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal which is limited to those issues must be dismissed.

Where oil and gas lease offers have been rejected because of a moratorium on the leasing of the subject lands which was imposed by the direct order of the Secretary of the Interior, and the rejected applicant has filed suit, now pending, for judicial review of the legality of the Secretary's order, and also makes a contemporaneous appeal to the Board of Land Appeals, the Board will not await the outcome of the judicial proceedings, but will summarily dismiss the appeal.

Texas Oil & Gas Corp., 46 IBLA 50 (Feb. 20, 1980)

Timely filing of a notice of appeal with the Board of Land Appeals is jurisdictional. If appeal from a decision of a Bureau of Land Management official is untimely, the Board does not have jurisdiction to consider it and that official must close the case pursuant to 43 CFR 4.411(b). When an appeal is properly filed, the BLM official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over it is restored by Board action disposing of the appeal. Where BLM closes a case because appeal was untimely when in fact it was timely, the Board's jurisdiction will have been triggered at the time of filing of the notice of appeal. BLM's action in closing the case is a nullity and does not affect the appellant's rights before the Board.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file a timely notice of appeal in the proper office within 30 days from service of the decision appealed from in order to comply with the requirements of the applicable regulations in 30 CFR 290.

Union Oil Co. of California, 48 IBLA 145 (June 9, 1980)

Texaco, Inc., 51 IBLA 243 (Dec. 15, 1980)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Ilean Landis, 49 IBLA 59 (July 21, 1980)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedDismissal--Continued

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Where appellant's allegations on appeal are immaterial and irrelevant and appellant fails to establish any error in the decision below or any infringement of appellant's rights, the appeal is properly dismissed as lacking in merit.

Margaret Wallace, 49 IBLA 256 (Aug. 18, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order, which temporarily suspended oil and gas leasing, and was issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department. An appeal which is limited to those issues must be dismissed.

William F. Jeffers, Jr., William F. Jeffers, 49 IBLA 264 (Aug. 18, 1980)

The provisions of 43 CFR 4.411, requiring that a notice of appeal be filed within 30 days of the decision appealed from, are mandatory, inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. An appeal which was not filed timely must be dismissed.

For the purposes of the proviso to 43 CFR 4.410, which grants any party to a case a right of appeal to the Board of Land Appeals "except * * * where a decision has been approved by the Secretary," the Under Secretary is vested with the authority of the Secretary to make decisions final for the Department and thus not subject to review by the Board.

ENA--People's Legal Services, 49 IBLA 307 (Aug. 20, 1980)

An appeal from a decision declaring mining claims abandoned and void because of failure to meet the recordation requirements of the Federal Land Policy and Management Act of 1976 may be dismissed where the appellant failed to file her statement of reasons or request for a further extension of time to file a statement within time granted by the Board and she does not satisfactorily show why a request was not timely filed, and there is no likelihood she could prevail on the merits of the case in any eventuality.

Floise Joyce Williamsen, 50 IBLA 42 (Sept. 9, 1980)

Under 43 CFR 4.402 and 4.412, an appeal to the Board will be subject to summary dismissal by the Board if a statement of reasons for the appeal is not included in the notice of appeal and is not filed within 30 days after the notice of appeal was filed.

E. F. Hart, 50 IBLA 138 (Sept. 26, 1980)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedDismissal--Continued

Where an individual is named as an "adverse party" in a BLM decision which is favorable to that person, who then is duly served with copies of a notice of appeal and statement of reasons challenging the validity of BLM's decision before the Board of Land Appeals and seeking reversal of that decision, but decides not to participate in the appellate proceedings before the Board, the matter becomes res judicata upon the rendering of the Board's decision, and the party may not subsequently challenge this decision by filing a new appeal of his own before the Board for readjudication of the same matter.

Donald W. Cover, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of a policy directive issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal limited to those issues must be dismissed.

James R. Learned et al., 50 IBLA 416 (Oct. 24, 1980)

Effect of

Timely appeal to the Board of Land Appeals suspends the effect of a Bureau of Land Management decision pending outcome of the appeal. Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Timely filing of a notice of appeal with the Board of Land Appeals is jurisdictional. If appeal from a decision of a Bureau of Land Management official is untimely, the Board does not have jurisdiction to consider it and that official must close the case pursuant to 43 CFR 4.411(b). When an appeal is properly filed, the BLM official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over it is restored by Board action disposing of the appeal. Where BLM closes a case because appeal was untimely when in fact it was timely, the Board's jurisdiction will have been triggered at the time of filing of the notice of appeal. BLM's action in closing the case is a nullity and does not affect the appellant's rights before the Board.

State of Alaska v. Earl C. Patterson, 46 IBLA 56 (Feb. 22, 1980)

When an appeal is properly filed with the Board of Land Appeals from a decision made by an official of the Bureau of Land Management, that official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over the case is restored by Board action disposing of the appeal.

James T. Brown, 46 IBLA 265 (Mar. 27, 1980)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedEffect of--Continued

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

George E. Fernimore et al., 50 IBLA 280 (Oct. 6, 1980)

Failure to Appeal

A desert land applicant, whose application is rejected because of an adverse classification, and does not timely seek appropriate appellate review thereof, loses whatever rights may have accrued to him by virtue of the application and he will not enjoy any preference right to the land when it is subsequently classified as suitable for desert land entry.

Eruce C. Newcomb, 48 IBLA 263 (June 30, 1980)

Where following dismissal of a protest, a protestant files a supplemental protest and request for reconsideration, but asks that should such pleading be rejected it be considered in the alternative as a notice of appeal, protestant has complied with the provisions of 43 CFR 4.411 if such pleading is filed with ELM within 30 days after being served with ELM's dismissal of the protest.

Henry A. Alker, 49 IBLA 118 (July 28, 1980)

Hearings

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of a leasing service and its clientele where there are ambiguities in the complex contract between them, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients have given to the terms.

Valerie Mellor, Elizabeth R. Prozda, 49 IBLA 303 (Aug. 20, 1980)

A second hearing of a Government mining contest will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where he was actually present at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result. A petition to reopen a hearing of a Government mining contest will be denied when the contestee offers no valid justification for the neglect to offer evidence which was or could have been available at the original hearing. A further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery.

United States v. Leon R. Whitney, Cesar I. Fernandez, 51 IBLA 73 (Oct. 31, 1980)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedMotions

A motion to dismiss an appeal from a decision of the District Manager is properly granted pursuant to 43 CFR 4.470 where the arguments set forth by an applicant for a grazing license or permit are immaterial to the issue of whether the applicant has previously made substantial use of his grazing privileges.

Floyd and Corwin Silva, 45 IBLA 11 (Jan. 8, 1980)

The Government's motion for reconsideration, which contends that the current version of the limitation of Cost clause does not entitle a contractor to additional funding for a change unless the contracting officer specifically increases the estimated cost, provides no basis for overturning the Board's principal decision allowing excess costs attributable to a constructive change, where the contracting officer was given advance notice that the estimated costs would be exceeded and took no action to advise the contractor that no funding would be provided or to stop the project officer from asking for continued performance of the changed work.

Appeal of Recon Systems, Inc., IBCA-1214-9-78 (Jan. 17, 1980) 87 I.L. 7

Notice of Appeal

Where, in a decision holding a Native allotment for approval and a State selection for rejection to the extent of a conflict, the Bureau of Land Management grants the State 30 days to initiate a private contest challenging the Native allotment, the 30-day appeal period will commence upon expiration of the 30 days accorded the State for initiation of a private contest and not with receipt of the decision.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

State of Alaska, 48 IBLA 229 (June 17, 1980)

In order to constitute a notice of appeal a document must state in an objectively ascertainable manner a present intent to appeal a final decision of the Bureau of Land Management. A petition for reconsideration of a decision with reasons directed to the office which issued the decision that expresses a conditional intent to file an appeal in the future if the relief requested by petitioner is not granted does not constitute notice of appeal. Where the decision is reconsidered in response to the petition and the petitioner is notified that the decision is reaffirmed with right of appeal, the decision will become final in the absence of a timely appeal.

Ilean Landis, 49 IBLA 59 (July 21, 1980)

Where following dismissal of a protest, a protestant files a supplemental protest and request for reconsideration, but asks that should such pleading be rejected it be considered in the alternative as a notice of appeal, protestant has complied with the provisions of 43 CFR 4.411 if such pleading is filed with BLM within 30 days after being served with BLM's dismissal of the protest.

Henry A. Alker, 49 IBLA 118 (July 28, 1980)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedReconsideration

The Government's motion for reconsideration, which contends that the current version of the limitation of Cost clause does not entitle a contractor to additional funding for a change unless the contracting officer specifically increases the estimated cost, provides no basis for overturning the Board's principal decision allowing excess costs attributable to a constructive change, where the contracting officer was given advance notice that the estimated costs would be exceeded and took no action to advise the contractor that no funding would be provided or to stop the project officer from asking for continued performance of the changed work.

Appeal of Reccon Systems, Inc., IECA-1214-9-78 (Jan. 17, 1980) 87 I.L. 7

Where, upon the second review of the record pursuant to appellant's motion for reconsideration, the Board finds that the main premise upon which appellant's original claim for relief was based is neither supported by the evidence of record nor by any apparent legal authority, the Board will deny the motion for reconsideration without reaching the ancillary issue raised by such motion.

Appeal of Wunschel & Small, Inc., IECA-1263-5-79 (June 27, 1980)

Where in a motion for reconsideration counsel fails to apprise the Board of any significant newly discovered evidence or evidence not duly considered in the course of rendering the principal decision, the motion will be denied.

Appeal of Tiffany Construction Co., IECA-1162-8-77 (Aug. 22, 1980)

Standing to Appeal

Where a Native corporation has pending an application to acquire land, which land was awarded to an Alaska Native by BLM pursuant to a Native allotment application, the Native corporation is a party adversely affected by the decision of BLM and therefore has a right to appeal pursuant to 43 CFR 4.410, from the BLM decision holding the Native allotment application for allowance and will be afforded the opportunity to contest the Native allotment application.

Cuzinkie Native Corp. v. Edward C.heim, Sr., 45 IBLA 198 (Jan. 30, 1980)

For the purposes of the proviso to 43 CFR 4.410, which grants any party to a case a right of appeal to the Board of Land Appeals "except * * * where a decision has been approved by the Secretary," the Under Secretary is vested with the authority of the Secretary to make decisions final for the Department and thus not subject to review by the Board.

INA--People's Legal Services, 49 IBLA 307 (Aug. 20, 1980)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedStatement of Reasons

The Government's motion for reconsideration, which contends that the current version of the limitation of Cost clause does not entitle a contractor to additional funding for a change unless the contracting officer specifically increases the estimated cost, provides no basis for overturning the Board's principal decision allowing excess costs attributable to a constructive change, where the contracting officer was given advance notice that the estimated costs would be exceeded and took no action to advise the contractor that no funding would be provided or to stop the project officer from asking for continued performance of the changed work.

Appeal of Recon Systems, Inc., IBCA-1214-9-78 (Jan. 17, 1980)
87 I.L. 7

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Where appellant's allegations on appeal are immaterial and irrelevant and appellant fails to establish any error in the decision below or any infringement of appellant's rights, the appeal is properly dismissed as lacking in merit.

Margaret Wallace, 49 IBLA 256 (Aug. 18, 1980)

An appeal from a decision declaring mining claims abandoned and void because of failure to meet the recordation requirements of the Federal Land Policy and Management Act of 1976 may be dismissed where the appellant failed to file her statement of reasons or request for a further extension of time to file a statement within time granted by the Board and she does not satisfactorily show why a request was not timely filed, and there is no likelihood she could prevail on the merits of the case in any eventuality.

Eloise Joyce Williamson, 50 IBLA 42 (Sept. 9, 1980)

Under 43 CFR 4.402 and 4.412, an appeal to the Board will be subject to summary dismissal by the Board if a statement of reasons for the appeal is not included in the notice of appeal and is not filed within 30 days after the notice of appeal was filed.

E. M. Hart, 50 IBLA 138 (Sept. 26, 1980)

Timely Filing

The Board of Land Appeals will reverse a decision of the Geological Survey dismissing an appeal for failure to timely file an appeal within the time required by 30 CFR Part 290, from letter decisions assessing compensatory royalty in which no right of appeal was indicated, where appellant responded to the letter decisions and filed a timely notice of appeal to a subsequent decision issued by Geological Survey in which appellant was notified of its right to appeal.

Inexco Oil Co., 45 IBLA 377 (Feb. 13, 1980)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedTimely Filing--Continued

Timely filing of a notice of appeal with the Board of Land Appeals is jurisdictional. If appeal from a decision of a Bureau of Land Management official is untimely, the Board does not have jurisdiction to consider it and that official must close the case pursuant to 43 CFR 4.411(b). When an appeal is properly filed, the BLM official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over it is restored by Board action disposing of the appeal. Where BLM closes a case because appeal was untimely when in fact it was timely, the Board's jurisdiction will have been triggered at the time of filing of the notice of appeal. BLM's action in closing the case is a nullity and does not affect the appellant's rights before the Board.

State of Alaska v. Earl G. Patterson, 46 IEIA 56 (Feb. 22, 1980)

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file a timely notice of appeal in the proper office within 30 days from service of the decision appealed from in order to comply with the requirements of the applicable regulations in 30 CFR 290.

Union Oil Co. of California, 48 IBLA 145 (June 5, 1980)

Texaco, Inc., 51 IEIA 243 (Dec. 15, 1980)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Ilean Landis, 49 IEIA 59 (July 21, 1980)

The provisions of 43 CFR 4.411, requiring that a notice of appeal be filed within 30 days of the decision appealed from, are mandatory, inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. An appeal which was not filed timely must be dismissed.

INA--People's Legal Services, 49 IBLA 307 (Aug. 20, 1980)

An appeal from a decision declaring mining claims abandoned and void because of failure to meet the recordation requirements of the Federal Land Policy and Management Act of 1976 may be dismissed where the appellant failed to file her statement of reasons or request for a further extension of time to file a statement within time granted by the Board and she does not satisfactorily show why a request was not timely filed, and there is no likelihood she could prevail on the merits of the case in any eventuality.

Eloise Joyce Williamson, 50 IEIA 42 (Sept. 9, 1980)

RULES OF PRACTICE--ContinuedAPPEALS--ContinuedTimely Filing--Continued

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties. Where the record reveals no conclusive evidence that an appeal was filed timely, but the responsible official has referenced in correspondence that the appeal was timely, the presumption of administrative regularity will attach and the appeal considered as timely filed.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

EVIDENCE

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard G. Clemans et al., 45 IELA 64 (Jan. 17, 1980)

The Board of Land Appeals is obliged to consider everything contained in the record in determining all matters relevant to the disposition of an appeal.

M. S. Mack, 45 IELA 99 (Jan. 17, 1980)

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered. If the Government fails to make a sufficient prima facie case against a mining claim, the claimant may move to have the contest dismissed and rest his case. However, when the claimant goes forward with his evidence, the Administrative Law Judge must consider the evidence presented and weigh it in accordance with its probative value. In choosing to rebut the case, the claimant bears the burden of doing so by a preponderance of the evidence and bears the risk of nonpersuasion if he fails.

United States v. Clare Williamson and Larine Purnice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Where, in the hearing of a mining claim contest in which the presence of a mineral deposit within the limits of a claim is at issue and the claim is accessible, it is established that the Government mineral examiner made no professional examination of certain of the contested claims, the testimony of the Government mineral examiner, without more, is insufficient to establish a prima facie case of invalidity.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

To warrant a further hearing in a mining claim contest, based upon asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Evidence of a past discovery is not sufficient by itself to indicate that a different result might now be obtained.

United States v. Mary E. Gray, 50 IBLA 209 (Sept. 30, 1980)

RULES OF PRACTICE--ContinuedGOVERNMENT CONTESTS

Where a mining claim contestee fails to appear at a contest hearing and merely sends a message stating that he will not appear, without stating the reasons for his absence, a subsequent motion to reschedule the hearing and reopen the record is properly denied, as the regulations provide that a postponement may be granted only pursuant to a request made no later than the hearing date and stating in detail the reasons why a postponement is necessary.

The asserted inability of a contestee to drive an automobile due to his taking medication is not an extreme emergency which justifies beyond question the granting of a postponement of the hearing where it is not impossible to get to a hearing site by public transportation. Nor is restricted mobility due to arthritis justification for a postponement where the record shows that it is an ongoing condition which could have been anticipated, and that transportation to the hearing site could have been arranged by exercise of proper diligence.

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record as completed at the hearing, despite the absence of evidence in support of the party's case.

New evidence offered on appeal after an initial decision is rendered by an Administrative Law Judge may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Richard H. Franklin, 45 IELA 54 (Jan. 14, 1980)

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered. If the Government fails to make a sufficient prima facie case against a mining claim, the claimant may move to have the contest dismissed and rest his case. However, when the claimant goes forward with his evidence, the Administrative Law Judge must consider the evidence presented and weigh it in accordance with its probative value. In choosing to rebut the case, the claimant bears the burden of doing so by a preponderance of the evidence and bears the risk of nonpersuasion if he fails.

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

United States v. Clare Williamson and Larine Purnice Co., 45 IELA 264 (Feb. 4, 1980) 87 I.D. 34

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to ELM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of ELM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

acceptable, it will order the allotment issued, if all else be regular.

State of Alaska v. Earl G. Patterson, 46 IBIA 56 (Feb. 22, 1980)

State of Alaska v. Joan M. Newhall, 47 IBIA 85 (Apr. 21, 1980)

State of Alaska v. Moses Chythlook, 47 IBIA 249 (May 13, 1980)

State of Alaska, 48 IBIA 229 (June 17, 1980)

Where a Government contest complaint against a mining claim contains charges which, if proved, would render the claim invalid, and the contestee fails to file an answer to the complaint in accordance with Departmental regulations, the allegations of the complaint will be taken as admitted by the contestee, and the claim is properly declared null and void. The Secretary is without authority to waive the regulations to permit the late filing of an answer.

United States v. Dan Seelinger, 46 IBIA 76 (Feb. 22, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular.

State of Alaska v. Elsie John, 46 IBIA 137 (Mar. 19, 1980)

State of Alaska v. Daniel Jimmie, Bertha A. Williams, 48 IBIA 370 (July 11, 1980)

State of Alaska v. Cora John Smith, 50 IBIA 6 (Sept. 5, 1980)

Where Bureau of Land Management determines that an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IBIA 165 (Mar. 21, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notification to the State, it has an election. The State may initiate a private contest proceeding during the time

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

prescribed to prove lack of qualification of the Native, or the State may await final decision from BLM and then appeal to this Board.

State of Alaska v. Ezra David and Cathy Dick, 46 IBIA 177 (Mar. 21, 1980)

Where Native allotment applicants who were 8 years and older at the date land was segregated from entry assert independent use and occupancy of the land then, the Bureau of Land Management should contest their applications, affording them notice and an opportunity for a hearing to prove the adequacy and independence of their use and occupancy, rather than reject the applications without a hearing simply because of the applicant's age on the segregative date.

William Fouwens et al., 46 IBIA 366 (Apr. 8, 1980)

A Native allotment applicant who is a minor is not precluded from establishing use and occupancy of the land applied for. However, such use and occupancy must be achieved as an independent citizen in his own right and must be potentially exclusive. The question of a 14-year old's independent use and occupancy is best addressed at a contest proceeding.

Eleanor H. Wood, 46 IBIA 373 (Apr. 8, 1980)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing.

United States v. William R. Soren, 47 IBIA 226 (May 13, 1980)

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Evan Chukwak, 47 IBIA 241 (May 13, 1980)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

United States v. George C. Hocker et al., 48 IBIA 22 (May 27, 1980)

The assertion that annual assessment work has not been performed is the assertion of a negative fact. If an examination of the mining claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence to this effect would be sufficient to establish a prima facie case. It would then devolve upon the claimant to show by a preponderance of the countervailing evidence that he has substantially complied with the statute.

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

Where the Government contests the validity of a mining claim for nonperformance of annual assessment work, there is nothing inherent or implied in that action which requires a conclusion that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the Government that "property rights in the claim have been established by the making of a valid location."

United States v. Catlin Bohme et al., United States v. Exxon Corp. et al., United States v. Adelaide Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The fact that such contest challenges the validity of certain mining claims and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. R. H. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

The procedure followed by the Department of the Interior in the initiation of mining contest cases is in compliance with the due process clause of the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 551 (1976).

United States v. Mary E. Gray, 50 IBLA 209 (Sept. 30, 1980)

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

HEARINGS

Where a mining claim contestee fails to appear at a contest hearing and merely sends a message stating that he will not appear, without stating the reasons for his absence, a subsequent motion to reschedule the hearing and reopen the record is properly denied, as the regulations provide that a postponement may be granted only pursuant to a request made no later than the hearing date and stating in detail the reasons why a postponement is necessary.

The asserted inability of a contestee to drive an automobile due to his taking medication is not an extreme emergency which justifies beyond question the granting of a postponement of the hearing where it is not impossible to get to a hearing site by public transportation. Nor is restricted mobility due to

RULES OF PRACTICE--Continued

HEARINGS--Continued

arthritis justification for a postponement where the record shows that it is an ongoing condition which could have been anticipated, and that transportation to the hearing site could have been arranged by exercise of proper diligence.

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record as completed at the hearing, despite the absence of evidence in support of the party's case.

New evidence offered on appeal after an initial decision is rendered by an Administrative Law Judge may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Richard F. Franklin, 45 IBLA 54 (Jan. 14, 1980)

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

United States v. Clare Williamson and Lapine Fumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing will be denied as well as his request for further suspension of the case.

Jack Zuckerman, 45 IBLA 337 (Feb. 7, 1980)

Timely appeal to the Board of Land Appeals suspends the effect of a Bureau of Land Management decision pending outcome of the appeal. Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IBLA 165 (Mar. 21, 1980)

Evan Chukwak, 47 IBLA 241 (May 13, 1980)

Mary Semone, 49 IBLA 213 (Aug. 11, 1980)

-- Continued

RULES OF PRACTICE--Continued

HEARINGS--Continued

Natalia Kepuk et al., 51 IBLA 170 (Nov. 26, 1980)

Where a corporate simultaneous oil and gas lease offeror alleges no facts which could disprove its failure to comply with 43 CFR 3102.4-1, no hearing will be granted as requested.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980)
87 I.L. 110

A Native allotment application filed pursuant to the Alaska Native Allotment Act of 1906 must be rejected if it was not pending before the Department of the Interior on Dec. 18, 1971. Where there are factual questions concerning the pendency of an application they can best be resolved at a hearing pursuant to a Government contest.

A Native allotment applicant who is a minor is not precluded from establishing use and occupancy of the land applied for. However, such use and occupancy must be achieved as an independent citizen in his own right and must be potentially exclusive. The question of a 14-year old's independent use and occupancy is best addressed at a contest proceeding.

Eleanor H. Wood, 46 IBLA 373 (Apr. 8, 1980)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Alva F. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Max Weiss, 49 IEIA 332 (Aug. 25, 1980)

George H. Fennimore et al., 50 IEIA 280 (Oct. 6, 1980)

A reference in a letter to the Bureau of Land Management from the winning drawee in a simultaneous oil and gas lease filing to "majority owners" of the lease, by itself is not sufficient to show there were undisclosed parties in interest at the time the offer was filed, but it would ordinarily warrant further investigation. Where a hearing is ordered on other issues to determine if there was a violation of the regulations in the filing, evidence should also be presented on this issue to explain the meaning of the reference and to show whether someone other than the offeror had an interest in the offer at the time it was filed.

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting against multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of Eden Capital Corp. and its clientele where there are ambiguities in the complex contract which provides for a preliminary division of lease obligations and proceeds and establishment of a lease escrow fund to protect funds promised to the client if the client exercises an option by which Eden will buy all leases in a particular lease program subscribed to by the client, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical

RULES OF PRACTICE--Continued

HEARINGS--Continued

application they and other clients of Eden have given to the terms.

Harry S. Hills, Kenneth F. Roth, 48 IEIA 356 (July 11, 1980)

The Board of Land Appeals will not order a further hearing in a mining claim contest case where a patent application has been filed merely because the evidentiary record is inadequate to invalidate the claims for lack of a discovery of a valuable mineral deposit, if the claimant is found to have met the discovery test.

United States v. Albert Martinez et al., 49 IEIA 360 (Aug. 29, 1980)
87 I.L. 386

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

John J. Schnabel, 50 IBLA 201 (Sept. 30, 1980)

The procedure followed by the Department of the Interior in the initiation of mining contest cases is in compliance with the due process clause of the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 551 (1976).

To warrant a further hearing in a mining claim contest, based upon asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Evidence of a past discovery is not sufficient by itself to indicate that a different result might now be obtained.

United States v. Mary F. Gray, 50 IEIA 209 (Sept. 30, 1980)

Where issues of material fact are in dispute, due process requires that, before a decision is reached to reject an application for an allotment, the applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of witnesses may be submitted.

The Court of Appeals for the Ninth Circuit has held that application of the Departmental contest procedures to provide the allotment applicant with notice and an opportunity for a hearing prior to adverse action on the allotment application complies, at least facially, with the due process requirements set forth in the court's mandate in Fence v. Klerge, 529 F.2d 135 (9th Cir. 1976). Fence v. Andrus, 586 F.2d 733 (9th Cir. 1978).

Mary DeVaney, 51 IEIA 165 (Nov. 26, 1980)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented

RULES OF PRACTICE--Continued

HEARINGS--Continued

evidence raising an issue of fact regarding the status of the well.

John Swanson, 51 IBLA 239 (Dec. 15, 1980)

PRIVATE CONTESTS

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of ELM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, if all else be regular.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

State of Alaska, 48 IBLA 229 (June 17, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to ELM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular.

State of Alaska v. Elsie John, 46 IBLA 137 (Mar. 19, 1980)

State of Alaska v. Daniel Jimmie, Bertha A. Williams, 48 IBLA 370 (July 11, 1980)

State of Alaska v. Cora John Smith, 50 IBLA 6 (Sept. 5, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notification to the State, it has an election. The State may initiate a private contest proceeding during the time prescribed to prove lack of qualification of the Native, or the State may await final decision from ELM and then appeal to this Board.

State of Alaska v. Dora David and Cathy Dick, 46 IBLA 177 (Mar. 21, 1980)

RULES OF PRACTICE--Continued

PRIVATE CONTESTS--Continued

When there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to ELM that the Native applicant has met the requirements for patent, ELM must notify the State that, if dissatisfied, it has an election of remedies. The State may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of ELM to the Board of Land Appeals. If on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Joan M. Newhall, 47 IBLA 85 (Apr. 21, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaskan Native for allotment under the Act of May 17, 1906, and it appears to ELM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of ELM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Moses Chythlock, 47 IBLA 249 (May 13, 1980)

Where the State of Alaska lacks a cognizable interest in the specific land being sought by a Native allotment applicant because that land is either within the core township of a Native village or the Native village has received tentative approval for its selection, the State does not have standing to initiate a private contest under 43 CFR 4.450-1. It may, however, protest against the allowance of the allotment and appeal from an adverse decision under 43 CFR 4.410.

State of Alaska v. Steve Sarakovikoff et al., 50 IBLA 284 (Oct. 6, 1980)

PROTESTS

The right of appeal is limited to a party to a case adversely affected by a decision of the Bureau of Land Management, and an appeal from a timber sale notice will be remanded to the Bureau of Land Management for treatment as a protest. However, under the circumstances presented here, where the Bureau of Land Management has reviewed the protestant's reasons and, in effect, has made its decision communicating it to the protestant and this Board, no purpose would be served by remanding the case and the Board will consider the matter on its merits.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

RULES OF PRACTICE--ContinuedPROTESTS--Continued

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing will be denied as well as his request for further suspension of the case.

Jack Zuckerman, 45 IBLA 337 (Feb. 7, 1980)

A protest against the issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should have been disqualified, that assignees were not bona fide purchasers or that the leases should be cancelled.

Geosearch, Inc., 48 IBLA 51 (May 29, 1980)

Where a protestant challenges the bona fides of an oil and gas leaseholder, the burden is upon appellant, not the BLM, to establish by facts the substance of its charge.

Naartex Consulting Corp., 48 IBLA 166 (June 9, 1980)

SUPERVISORY AUTHORITY OF THE SECRETARY

For the purposes of the proviso to 43 CFR 4.410, which grants any party to a case a right of appeal to the Board of Land Appeals "except * * * where a decision has been approved by the Secretary," the Under Secretary is vested with the authority of the Secretary to make decisions final for the Department and thus not subject to review by the Board.

DNA--People's Legal Services, 49 IBLA 307 (Aug. 20, 1980)

SCHOOL LANDS

(See also State Selections--if included in this Index.)

GRANTS OF LAND

Title to certain designated school sections granted to the State of Utah under the Act of July 16, 1894, vested as of the date of acceptance of the official survey of those sections following statehood if the lands were not known to be mineral at that time. Whether the lands were known to be mineral is a question of fact and this contest must be remanded for the hearing of evidence on that issue.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

SCHOOL LANDS--ContinuedINDEMNITY SELECTIONS

The "grossly disparate value policy," under which the Department rejects States applications for lands in lieu of lands lost from their school grants by reason of settlements, etc., under 43 U.S.C. §§ 851, 852 (1976), where the value of the selected lands grossly exceeds the value of the lost base lands, is a lawful exercise of the Secretary's power and a valid ground to reject such an application. Accordingly, where the record indicates that the selected lands may be much more valuable than the base lands, the matter will be remanded to EIM for a determination of such values.

State of New Mexico (On Reconsideration), 50 IBLA 367 (Oct. 21, 1980)

MINERAL LANDS

Title to certain designated school sections granted to the State of Utah under the Act of July 16, 1894, vested as of the date of acceptance of the official survey of those sections following statehood if the lands were not known to be mineral at that time. Whether the lands were known to be mineral is a question of fact and this contest must be remanded for the hearing of evidence on that issue.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

SECRETARY OF THE INTERIOR

(See also Administrative Authority--if included in this Index.)

The Department of the Interior, as an agency of the Executive Branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal which is limited to those issues must be dismissed.

Texas Oil & Gas Corp., 46 IBLA 50 (Feb. 20, 1980)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on environmental analysis reports for the Uinta National Forest, special protective stipulations are not unreasonable, per se.

Liane B. Katz, 47 IBLA 177 (May 7, 1980)

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey or the Bureau of Land Management to determine whether such Secretarial

SECRETARY OF THE INTERIOR--Continued

regulations, orders, or policies have been correctly implemented.

Pass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

The Secretary has broad power to regulate all on-lease activities by oil and gas lessees and operators pursuant to the conditions contained in oil and gas leases and his general regulatory authority under the Mineral Leasing Act. The procedures for regulating activities on oil and gas leases, established under Secretarial Order 2948 and the BLM-USGS Cooperative Procedures Agreement implementing that order, reserve to the Department the authority to protect the United States legal interests in the property. The Secretary has broad discretion either to continue this procedure, or to substitute any other delegation of his authority and any other reasonable regulatory procedure which he concludes would equally protect the United States interests.

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.D. 291

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order, which temporarily suspended oil and gas leasing, and was issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department. An appeal which is limited to those issues must be dismissed.

William E. Jeffers, Jr., William E. Jeffers, 49 IBLA 264 (Aug. 18, 1980)

Where the Secretary has decided that production from phosphate leases should be valued in accordance with a particular method and what the value should be, the Board's review authority is limited to determining whether the Geological Survey Area Supervisor who issues orders to the phosphate lessees has properly followed the Secretary's instructions. No hearing is required as a prerequisite to the order.

Where the Department has not formally adopted any methodology for determining the value of production from phosphate leases, but has instead allowed lessees simply to pay royalty based on the minimum value specified in the lease after having advised them that a new method of determining a realistic value was being developed, it may assert that royalty was incorrect even after it has accepted these royalty payments, and may impose the method as approved by the Secretary.

Stauffer Chemical Co. et al., 49 IBLA 381 (Sept. 5, 1980)

Under 43 U.S.C. § 1714(b) (1976) a publication in the Federal Register of notification of an application for withdrawal, which publication temporarily segregates land from the operation of the mining laws, does not withdraw the land, and therefore the notice need not be signed by the Secretary or an individual in the Office of the Secretary who has been appointed by the President, by and with the advice and consent of the Senate.

Stephen W. Fox, 50 IELA 186 (Sept. 30, 1980) 87 I.D. 462

SECRETARY OF THE INTERIOR--Continued

As the Department's final review authority on decisions relating to the public lands, the Board of Land Appeals exercises all the powers which the Department would have in making an initial decision.

Frederick H. Larson v. State of Utah, 50 IELA 382 (Oct. 22, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of a policy directive issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal limited to those issues must be dismissed.

James R. Learned et al., 50 IELA 416 (Oct. 24, 1980)

The Secretary of the Interior is authorized, and is under a duty to consider and determine what lands are public lands of the United States, and after having made that determination the Secretary has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the Forest Service and prosecuted by counsel employed by the Department of Agriculture, with Forest Service employees as witnesses, where such action is in accordance with a Memorandum of Understanding between the agencies.

United States v. W. S. Wood et al., 51 IBLA 301 (Dec. 18, 1980) 87 I.D. 626

SEGREGATION

A permit allowing free use of mineral materials does not segregate the subject lands from further appropriation; rather, subsequent claims and entries are subject to the terms of the permit.

It is well established that an entry on public land under the laws of the United States segregates the land from the public domain, appropriates it to private use, and withdraws it from subsequent entry or acquisition until that entry is finally cancelled. Applications for interest in public lands must be rejected if the lands are not available for the requested disposition at the time they are filed or considered. Where a right-of-way was granted to lands subject at the time to a valid homestead entry, BLM properly declares the grant null and void ab initio.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for geothermal resources leasing, and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

Trent J. Farker, 49 IELA 209 (Aug. 11, 1980)

SEGREGATION--Continued

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for airport purposes and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper under the regulations to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

Donald Epperson, 50 IBLA 267 (Sept. 30, 1980)

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice, and applications for such land must be rejected.

Robert Dale Marston et al., 51 IBLA 115 (Nov. 20, 1980)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

SMALL TRACT ACT

GENERALLY

Where BLM classifies a 4-acre tract as suitable for disposal under the Small Tract Act, thereby segregating it from acquisition under other public land laws, then grants an individual a lease thereon with option to purchase, pursuant to which the lessee constructs buildings and occupies the tract, the protest and application of an Alaska Native, made for the first time 12 years later, will be rejected, as a matter of law and equity where the Native was claiming 160 acres of different land during the preceding 6 years, and had made no assertion of interest in the small tract, but rather had expressly acknowledged the existence of the leasehold.

Evelyn Alexander, 45 IBLA 28 (Jan. 14, 1980)

APPRAISALS

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Hyatt Lake Homeowners Ass'n, 48 IBLA 159 (June 9, 1980)

SMALL TRACT ACT--Continued

CLASSIFICATION

Where BLM classifies a 4-acre tract as suitable for disposal under the Small Tract Act, thereby segregating it from acquisition under other public land laws, then grants an individual a lease thereon with option to purchase, pursuant to which the lessee constructs buildings and occupies the tract, the protest and application of an Alaska Native, made for the first time 12 years later, will be rejected, as a matter of law and equity where the Native was claiming 160 acres of different land during the preceding 6 years, and had made no assertion of interest in the small tract, but rather had expressly acknowledged the existence of the leasehold.

Evelyn Alexander, 45 IBLA 28 (Jan. 14, 1980)

RENEWAL OF LEASE

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Hyatt Lake Homeowners Ass'n, 48 IBLA 159 (June 9, 1980)

SODIUM LEASES AND PERMITS

(See also Mineral Leasing Act--if included in this Index.)

GENERALLY

A natural brine containing water and ions of sodium, potassium, calcium, magnesium, and chlorine may be considered a valuable deposit of a sodium compound within the meaning of 30 U.S.C. § 262 (1976) if either of two contingencies occur. First, sodium must be present in sufficient quantity as to be commercially valuable. Second, sodium must be essential to the molecular structure of the valuable mineral.

Land is "known to be valuable" for a mineral subject to the Mineral Leasing Act of Feb. 25, 1920, as amended, when "known conditions at the time [of location] were plainly such as to engender the belief that the land contained mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end." United States v. Southern Pacific Co., 251 U.S. 1, 13-14 (1919); Diamond Coal Co. v. United States, 233 U.S. 236, 239-40 (1914). In determining whether mineral deposits are such as to render their extraction profitable and justify expenditures, extrinsic factors, such as the cost of extraction, processing, transportation, and marketing must be considered.

Where sodium ions are commingled in a brine with calcium, potassium, and chlorine ions and no valuable deposit of a sodium or potassium compound is present, contestees' evaporation of such brine does not violate the Multiple Mineral Development Act, 30 U.S.C. §§ 521-531 (1976).

The Administrative Law Judge gave proper weight to Government testimony in dismissing the Government's contest complaint where the evidence supported a finding of the existence of a sodium-calcium-chloride brine, but did not support a finding that such brine was "known to be valuable" for a Leasing Act mineral.

SODIUM LEASES AND PERMITS--Continued

GENERALLY--Continued

The existence of a "related product" within the meaning of 30 U.S.C. § 262 (1976) presumes the existence of a valuable sodium compound deposit.

United States v. Leven Bardsley (Trustee), Marlene M. Bardsley, Individually and as Administratrix of the Estate of Donald H. Bardsley (Deceased), 45 IBIA 367 (Feb. 7, 1980)

PREFERENCE RIGHT LEASES

BLM properly applied the regulations set forth in 43 CFR Subparts 3520-21, effective May 7, 1976, to preference right lease applications pending on the effective date of such regulations.

BLM properly excluded from an applicant's demonstrated reserves of trona those reserves which the applicant, by stipulation in the prospecting permit, had agreed would not be subject to mining or recovery operations.

An exchange application tendered pursuant to 43 CFR Subpart 3526 is properly rejected by BLM where a preference right lease applicant has not demonstrated to the Secretary that he has a preference right to a lease.

A hearing is properly ordered pursuant to 43 CFR 3521.1-1(j) where a preference right lease application for trona is rejected and the applicant has alleged in his application facts sufficient to show that he is entitled to a lease. At the hearing, the permittee shall have both the burden of going forward and the burden of proof, and must show by a preponderance of the evidence that he has discovered a valuable deposit of trona and that the land is chiefly valuable therefor.

John S. Wold, Eugene V. Simons, 48 IBIA 106 (May 30, 1980)

SPECIAL USE PERMITS

The effect of a timely filed notice of appeal is to suspend the authority of the deciding official to exercise jurisdiction relating to the subject of the appeal. It does not have the effect, however, of suspending the authority of BLM to act on matters which, while related to the subject of the appeal, are nevertheless functionally independent therefrom.

Failure to pay the annual rental for a special land use permit constitutes sufficient ground for termination of the use. 43 CFR 2920.4(a).

East Canyon Irrigation Co., 47 IBIA 155 (May 6, 1980)

BLM's decision to award the one special recreation permit to use the Rio Grande River in New Mexico for commercial river trips which is available to first-time applicants by placing all closely qualified first-time applications into a drawing is an equitable way to award the permit and will be affirmed.

BLM's decision to restrict to 12 the number of special recreation permits to use the Rio Grande River in New Mexico for commercial river trips will be affirmed where the record shows that congestion on the river justifies such a restriction.

Outdoor Adventures, S.W., 50 IBIA 90 (Sept. 17, 1980)

STARE DECISIS

The Bureau of Land Management can recover the full cost of providing a service to an identifiable beneficiary regardless of the incidental public benefits flowing from that service. Charges may be made for environmental studies deemed appropriate for the proper consideration of the application.

Recognizing the principle of stare decisis, the Board nevertheless declines to follow a decision of the same district court involving the same statute where a circuit court decision, although arising under a different statute, is of more recent vintage, takes specific cognizance of the district court decision, and the circuit court decision comports with Departmental policies.

Colorado-Ute Electric Ass'n, Inc., 46 IBIA 35 (Feb. 20, 1980)

Failure to maintain a claim by doing assessment work each year may constitute evidence of abandonment. Independently, a failure to substantially comply with the requirement that annual assessment work be performed, 30 U.S.C. § 28 (1976), requires a finding that the claim has not been "maintained" within the meaning of sec. 37 of the Mineral Leasing Act, 30 U.S.C. § 193 (1976), and may result in a forfeiture of the claim. Hickel v. The Oil Shale Corp., 400 U.S. 48 (1970).

United States v. Catlin Fohme et al., United States v. Exxon Corp. et al., United States v. Aidalette Brown et al., 48 IBIA 267 (June 30, 1980) 87 I.L. 248

STATE SELECTIONS

(See also Schocl Lands, Swamplands--if included in this Index.)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act, 43 U.S.C. § 641 (1976), must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources, 48 IBIA 250 (June 26, 1980)

STATUTES

One seeking an exemption from the coverage of a statute, especially a statute whose purpose is corrective, must affirmatively demonstrate entitlement to that treatment.

Daniel Bros. Coal Co., 2 IBSMA 45 (Apr. 10, 1980) 87 I.L. 138

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations regardless of their actual knowledge of what is contained in such statutes and regulations.

Eric Murray, 47 IBIA 112 (Apr. 28, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Armando Majalca, 48 IBIA 351 (July 11, 1980)

STATUTES--Continued

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations.

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

John Lincoln, Jr., 49 IBLA 335 (Aug. 25, 1980)

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

Santa Monica Hospital Medical Center Foundation, 51 IBLA 194 (Dec. 5, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

Hugh A. Johnson, 50 IBLA 47 (Sept. 9, 1980)

John F. Schmelzer, 51 IBLA 188 (Dec. 2, 1980)

STATUTORY CONSTRUCTION

GENERALLY

Interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether scoria is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

STOCK-RAISING HOMESTEADS

(See also Homesteads (Ordinary)--if included in this Index.)

Interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether scoria is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

A patent of land under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1970), was not generally intended to give the grantee the right to use the land for mineral development, but mineral development was to proceed only under the mineral laws.

The mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1970), includes mineral substances which can be taken from the soil and which have a separate value, including those marketable minerals found at or near the surface, and which have no rare or exceptional character,

STOCK-RAISING HOMESTEADS--Continued

regardless of whether they are subject to disposition under 30 U.S.C. § 601 (1976) or other existing statutory authority.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Under the Stock-Raising Homestead Act, 43 U.S.C. §§ 291-301 (1970), there is no equitable basis for excluding valuable deposits of scoria from the scope of a Federal mineral reservation although the Government has successfully contended in other cases that common or surface minerals are not included in mineral reservations to the United States, because the rules of construction of private conveyances differ from those which govern Federal grants, and because 30 U.S.C. § 54 (1976) provides compensation for damage to surface owners' crops, improvements and grazing values.

Scoria which is valuable for surfacing roads is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

GENERALLY

Where a surface coal mining operation affects previously mined lands, the fact that an alleged violation could have existed before the present operation does not relieve the permittee from responsibility for the violation.

Central Oil and Gas, Inc., 2 IBSMA 308 (Oct. 23, 1980)
87 I.L. 494

RESTATEMENT

Remedial Actions

When a permittee does not have approval from the regulatory authority for an exemption from the requirements of the Act at the time of an CSM inspection, the inspector may properly require remedial action of a reclamation nature in a notice of violation.

Hardly Able Coal Co., 2 IBSMA 270 (Sept. 24, 1980)
87 I.L. 434

ADMINISTRATIVE PROCEDURE

Generally

Affidavits to support allegations of fact in a motion for summary decision filed pursuant to 43 CFR 4.1125 are not necessary when there is no disputed issue as to any material fact.

Daniel Price Coal Co., 2 IBSMA 45 (Apr. 10, 1980)
87 I.L. 138

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

Under 43 CFR 4.1153 OSM has an absolute right to submit an answer to a petition within 30 days from receipt of a copy of the petition. After that time, the Administrative Law Judge has discretion to regulate the scope of the answer in any reasonable manner.

Addington Bros. Mining, Inc., 2 IBSMA 90 (May 22, 1980)
87 I.L. 186

The Board will not rule on the merits of a notice of violation that is not properly before it.

Kaiser Steel Corp., 2 IBSMA 158 (July 25, 1980)
87 I.L. 324

Pursuant to 43 CFR 4.1161-.1162, it was error for the Administrative Law Judge not to dismiss an application for review filed with the Hearings Division after the time prescribed for such applications.

Green Coal Co., 2 IBSMA 199 (Aug. 19, 1980)
87 I.L. 362

Under the circumstances of this case, it was error for the Administrative Law Judge to vacate a notice of violation on his own motion on the grounds that it lacked reasonable specificity as required by sec. 521(a)(5) of the Act when the parties expressed no confusion about the nature of the alleged violation.

Grafton Coal Co., Inc., 2 IBSMA 316 (Nov. 4, 1980)
87 I.L. 521

Findings

When a cessation order indicates that it is being issued both because the condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm and because there has been a failure to abate a violation listed in a notice of violation, a finding of either of those grounds is sufficient to sustain the cessation order.

Hayden & Hayden Coal Co., 2 IBSMA 238 (Sept. 12, 1980)
87 I.L. 414

Scope of Review

The Interior Board of Surface Mining and Reclamation Appeals is not the proper forum to consider the constitutionality of regulations promulgated by the Secretary.

Amanda Coal Co., 2 IBSMA 395 (Dec. 22, 1980)
87 I.L. 643

APPLICABILITY

Initial Regulatory Program

The Office of Surface Mining Reclamation and Enforcement has jurisdiction to enforce the initial Federal performance standards against a surface disturbance in Kentucky of less than 2 acres and the Federal 2-acre exemption set forth in 30 CFR 700.11(b) is not applicable where the disturbance is physically related to a surface coal mining operation under permit from the Commonwealth of Virginia, and where the disturbance is

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

--Continued

APPLICABILITY--Continued

Initial Regulatory Program--Continued

not a discrete operation but was undertaken in furtherance of the Virginia operation.

Blackwood Fuel Co., Inc., 2 IBSMA 359 (Nov. 24, 1980)
87 I.L. 575

APPROXIMATE ORIGINAL CONTOUR

Generally

Elimination of a highwall is a specific requirement of 30 CFR 715.14 which must be satisfied in order to achieve approximate original contour. If a highwall has not been eliminated, it necessarily follows that return to approximate original contour has not been accomplished.

Little Sandy Coal Sales, 2 IBSMA 25 (Feb. 19, 1980)
87 I.L. 61

The augering of a coal seam in an orphan highwall may make a permittee responsible for returning the entire highwall to approximate original contour.

Miami Springs Properties, 2 IBSMA 399 (Dec. 23, 1980)
87 I.L. 645

BACKFILLING AND GRADING REQUIREMENTS

Generally

Elimination of a highwall is a specific requirement of 30 CFR 715.14 which must be satisfied in order to achieve approximate original contour. If a highwall has not been eliminated, it necessarily follows that return to approximate original contour has not been accomplished.

Little Sandy Coal Sales, 2 IBSMA 25 (Feb. 19, 1980)
87 I.L. 61

Under the circumstances of this case, sufficient evidence was presented to show that unforeseen circumstances arose during regrading, that the state regulatory authority approved a change to the permit under its established procedures, and that the change was carried out in accordance with the requirements of 30 CFR 715.14(b).

Grafton Coal Co., Inc., 2 IBSMA 316 (Nov. 4, 1980)
87 I.L. 521

Highwall Elimination

In a steep slope mining operation all highwalls must be completely backfilled after mining is concluded, even where retention of an access road has been approved as part of a postmining land use.

Iceledge Creek Elkhorn Mining Co., 2 IBSMA 341 (Nov. 24, 1980)
87 I.L. 570

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

BACKFILLING AND GRADING REQUIREMENTS--Continued

Highwall Elimination--Continued

The augering of a coal seam in an orphan highwall may make a permittee responsible for returning the entire highwall to approximate original contour.

Miami Springs Properties, 2 IBSMA 399 (Dec. 23, 1980)
87 I.L. 645

Previously Mined Lands

The augering of a coal seam in an orphan highwall may make a permittee responsible for returning the entire highwall to approximate original contour.

Miami Springs Properties, 2 IBSMA 399 (Dec. 23, 1980)
87 I.D. 645

CESSATION ORDERS

Generally

A cessation order is not properly issued under sec. 521(a)(2) of the Act unless the environmental harm alleged to be significant may be described objectively on the basis of observations or measurements.

A cessation order is not properly issued under sec. 521(a)(2) of the Act when the evidence does not support a finding that significant environmental harm may reasonably be expected to occur before the expiration of an abatement period that would be set pursuant to sec. 521(a)(3) of the Act.

Claypool Construction Co., Inc., 2 IBSMA 81 (May 16, 1980)
87 I.L. 168

Where OSM fails to hold an informal assessment conference within 60 days of the request and the person assessed a civil penalty timely objects to the date of the conference but alleges no actual prejudice, no relief is appropriate.

Where OSM fails to hold an informal assessment conference within 60 days of the request and the person assessed a civil penalty timely objects to the date of the conference but then does not forward the proposed penalty with its petition for review, the petition must be dismissed.

Badger Coal Co., 2 IBSMA 147 (July 25, 1980)
87 I.D. 319

When a cessation order indicates that it is being issued both because the condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm and because there has been a failure to abate a violation listed in a notice of violation, a finding of either of those grounds is sufficient to sustain the cessation order.

Hayden & Hayden Coal Co., 2 IBSMA 238 (Sept. 12, 1980)
87 I.L. 414

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

CIVIL PENALTIES

Generally

43 CFR 4.1260 does not authorize temporary relief from the requirement of 43 CFR 4.1152(b) that a proposed civil penalty be paid into escrow pending a final determination on the merits of the case.

30 CFR 723.14(a) does not authorize an Administrative Law Judge to reduce the number of days for which a civil penalty may be assessed when the obligation to abate the violation has not been suspended.

Cravat Coal Co., Inc., 2 IBSMA 249 (Sept. 23, 1980)
87 I.L. 416

Hearings Procedure

Under 43 CFR 4.1153 OSM has an absolute right to submit an answer to a petition within 30 days from receipt of a copy of the petition. After that time, the Administrative Law Judge has discretion to regulate the scope of the answer in any reasonable manner.

Addington Ecs. Mining, Inc., 2 IBSMA 90 (May 22, 1980)
87 I.L. 186

Where CSM fails to hold an informal assessment conference within 60 days of the request and the person assessed a civil penalty timely objects to the date of the conference but alleges no actual prejudice, no relief is appropriate.

Where CSM fails to hold an informal assessment conference within 60 days of the request and the person assessed a civil penalty timely objects to the date of the conference but then does not forward the proposed penalty with its petition for review, the petition must be dismissed.

Badger Coal Co., 2 IBSMA 147 (July 25, 1980)
87 I.L. 319

ENFORCEMENT PROCEDURES

Generally

The Office of Surface Mining Reclamation and Enforcement is authorized to issue a notice of violation for noncompliance with the initial regulatory program even if a state has already initiated enforcement action for the same violation.

Eastover Mining Co., 2 IBSMA 5 (Jan. 21, 1980)
87 I.L. 9

The Secretary of the Interior, through the promulgation of regulations, has determined that sec. 521(a)(1) of the Act does not apply during the initial regulatory program.

CSM is required to issue a notice for violations of the initial regulatory program even if a state has already taken enforcement action against the same violation.

Kaiser Steel Corp., 2 IBSMA 158 (July 25, 1980)
87 I.L. 324

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ENVIRONMENTAL HARM

Imminence

A cessation order is not properly issued under sec. 521(a) (2) of the Act when the evidence does not support a finding that significant environmental harm may reasonably be expected to occur before the expiration of an abatement period that would be set pursuant to sec. 521(a) (3) of the Act.

Claypool Construction Co., Inc., 2 IBSMA 81 (May 16, 1980) 87 I.D. 168

Significance

A cessation order is not properly issued under sec. 521(a) (2) of the Act unless the environmental harm alleged to be significant may be described objectively on the basis of observations or measurements.

Claypool Construction Co., Inc., 2 IBSMA 81 (May 16, 1980) 87 I.D. 168

EVIDENCE

Generally

Since the reviewing authority may use interference with an inspection against the permittee in any way deemed appropriate, a permittee who interferes with an inspection does so at the risk of severely prejudicing its own case.

Eastover Mining Co., 2 IBSMA 70 (May 16, 1980) 87 I.D. 172

The existence of an intermittent stream at the time of an OSM inspection and at subsequent inspections and the statements of mine officials that an intermittent stream existed before the initial inspection raise a rebuttable presumption that an intermittent stream subject to the requirements of 30 CFR 715.17(d) existed prior to mining.

Persuasive, uncontradicted evidence that the state regulatory authority considered a stream to be ephemeral before the granting of a permit, coupled with other evidence to the same effect, is sufficient under the circumstances to rebut the presumption that an intermittent stream existed prior to mining.

Sunbeam Coal Corp., 2 IBSMA 222 (Aug. 29, 1980) 87 I.D. 383

It is not error for an Administrative Law Judge to rely on hearsay evidence of chain of custody when the permittee challenges that evidence only by asserting that it is hearsay.

Roberts Brothers Coal Co., Inc., 2 IBSMA 284 (Sept. 26, 1980) 87 I.D. 439

Under the circumstances of this case, sufficient evidence was presented to show that unforeseen circumstances arose during regrading, that the state regulatory authority approved a change to the permit under its established procedures, and that the change was carried out in accordance with the requirements of 30 CFR 715.14(b).

Grafton Coal Co., Inc., 2 IBSMA 316 (Nov. 4, 1980) 87 I.D. 521

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

EVIDENCE--Continued

Generally--Continued

A prima facie case for the existence of a human burial ground can be established by evidence that stones at the purported site of the burial ground bear inscriptions generally associated with gravemarkers, combined with evidence that the site is described as a "cemetery" in a coal lease pertinent to land that includes the site.

Marietta Coal Co., 2 IBSMA 382 (Nov. 26, 1980) 87 I.D. 589

In this case, because OSM presented sufficient evidence to establish a prima facie case that the permittee had auger-mined the coal seam at the base of an orphan highwall and that that mining had an adverse physical impact on the highwall, it was error for the Administrative Law Judge to grant a motion to dismiss made at the conclusion of OSM's evidence.

Miami Springs Properties, 2 IBSMA 399 (Dec. 23, 1980) 87 I.D. 645

HEARINGS

Generally

Since the reviewing authority may use interference with an inspection against the permittee in any way deemed appropriate, a permittee who interferes with an inspection does so at the risk of severely prejudicing its own case.

Eastover Mining Co., 2 IBSMA 70 (May 16, 1980) 87 I.D. 172

Notice

Parties are entitled to written, advance notice of the time, place, and nature of a hearing to review a cessation order, in accordance with the provisions of 43 CFR 4.1123(b) and 4.1167.

Cravat Coal Co., 2 IBSMA 136 (July 3, 1980) 87 I.D. 308

HYDROLOGIC SYSTEM PROTECTION

Generally

The sedimentation pond requirement of 30 CFR 715.17(a) is a preventive measure and proof of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of that requirement.

Black Fox Mining & Development Corp., 2 IBSMA 110 (June 6, 1980) 87 I.D. 207

INITIAL REGULATORY PROGRAM

Generally

The Secretary of the Interior, through the promulgation of regulations, has determined that sec. 521(a) (1) of the Act does not apply during the initial regulatory program.

OSM is required to issue a notice for violations of the initial regulatory program even if a state has

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

INITIAL REGULATORY PROGRAM--Continued

Generally--Continued

already taken enforcement action against the same violation.

Kaiser Steel Corp., 2 IBSMA 158 (July 25, 1980)
87 I.L. 324

Sec. 521(a)(1) of the Act does not have effect during the initial regulatory program.

Capitol Fuels, Inc., 2 IBSMA 261 (Sept. 24, 1980)
87 I.L. 430

Compliance with state mining permit conditions does not excuse noncompliance with the initial Federal performance requirements.

Tollage Creek Elkhorn Mining Co., 2 IBSMA 341
(Nov. 24, 1980) 87 I.L. 570

During the initial regulatory program a critical determinant of the jurisdiction of the Office of Surface Mining Reclamation and Enforcement over a surface coal mining operation conducted on lands within a state is whether the operation is subject to state regulation within the scope of any of the initial Federal performance standards.

The Office of Surface Mining Reclamation and Enforcement has jurisdiction to enforce the initial Federal performance standards against a surface disturbance in Kentucky of less than 2 acres and the Federal 2-acre exemption set forth in 30 CFR 700.11(t) is not applicable where the disturbance is physically related to a surface coal mining operation under permit from the Commonwealth of Virginia, and where the disturbance is not a discrete operation but was undertaken in furtherance of the Virginia operation.

Blackwood Fuel Co., Inc., 2 IBSMA 359 (Nov. 24, 1980)
87 I.L. 579

INSPECTIONS

Generally

Where extraordinary circumstances exist an entry made by an inspector without prior presentation of credentials complies with the requirements of 30 CFR 721.12(a).

Consolidation Coal Co., 2 IBSMA 21 (Feb. 13, 1980)
87 I.L. 59

An inspector may document conditions or practices discovered during an inspection that are believed to violate the Act or regulations by taking photographs.

Eastover Mining Co., 2 IBSMA 70 (May 16, 1980)
87 I.L. 172

The regulation, 30 CFR 715.11(b), requiring that authorizations to operate be available for inspection at or near the minesite obligates the permittee or mine operator to maintain those authorizations where they are readily available for review by an inspector during an on-site inspection. However, if the authorizations are not immediately available and the inspector wants

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

INSPECTIONS--Continued

Generally--Continued

to review them, he or she must specifically direct that they be produced within a reasonable time.

Brannham and Baker Coal Co., Inc., 2 IBSMA 209 (Aug. 28, 1980)
87 I.L. 377

An CSM inspector who, after a reasonably diligent search, does not find a mine employee with some degree of management or supervisory authority and who is not asked for identification by other employees, may conduct an inspection without the prior presentation of credentials.

Capitol Fuels, Inc., 2 IBSMA 261 (Sept. 24, 1980)
87 I.L. 430

Interference

A permittee's refusal to allow CSM to take photographs is an interference with the inspection that is sanctionable under the Act.

Since no provision in the regulations makes interference with an inspection administratively sanctionable, a notice of violation is not proper.

Since the reviewing authority may use interference with an inspection against the permittee in any way deemed appropriate, a permittee who interferes with an inspection does so at the risk of severely prejudicing its own case.

Eastover Mining Co., 2 IBSMA 70 (May 16, 1980)
87 I.L. 172

NOTICES OF VIOLATION

Generally

The Office of Surface Mining Reclamation and Enforcement is authorized to issue a notice of violation for noncompliance with the initial regulatory program even if a state has already initiated enforcement action for the same violation.

Eastover Mining Co., 2 IBSMA 5 (Jan. 21, 1980)
87 I.L. 9

Since no provision in the regulations makes interference with an inspection administratively sanctionable, a notice of violation is not proper.

Eastover Mining Co., 2 IBSMA 70 (May 16, 1980)
87 I.L. 172

Where CSM fails to hold an informal assessment conference within 60 days of the request and the person assessed a civil penalty timely objects to the date of the conference but alleges no actual prejudice, no relief is appropriate.

Where CSM fails to hold an informal assessment conference within 60 days of the request and the person assessed a civil penalty timely objects to the date of the conference but then does not forward the proposed

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

NOTICES OF VIOLATION--Continued

Generally--Continued

penalty with its petition for review, the petition must be dismissed.

Badger Coal Co., 2 IESMA 147 (July 25, 1980) 87 I.D. 319

OSM is required to issue a notice for violations of the initial regulatory program even if a state has already taken enforcement action against the same violation.

Kaiser Steel Corp., 2 IESMA 158 (July 25, 1980) 87 I.L. 324

Violations of sec. 522(e) of the Act may be the subject of notices of violation under 30 CFR 722.12.

Hardly Able Coal Co., 2 IESMA 270 (Sept. 24, 1980) 87 I.L. 434

Permittees

A permittee is a proper party to be issued a notice of violation under the Act and a lease agreement between a permittee and a private party cannot relieve the permittee from its responsibilities under the Act.

Wilson Farms Coal Co., 2 IESMA 116 (June 27, 1980) 87 I.L. 245

Remedial Actions

When a permittee does not have approval from the regulatory authority for an exemption from the requirements of the Act at the time of an OSM inspection, the inspector may properly require remedial action of a reclamation nature in a notice of violation.

Hardly Able Coal Co., 2 IESMA 270 (Sept. 24, 1980) 87 I.L. 434

Specificity

The failure of an OSM inspector to set forth with reasonable specificity in a notice of violation the nature of the alleged violation and the required remedial action will result in a vacation of the notice.

Old Ben Coal Co., 2 IESMA 38 (Apr. 3, 1980) 87 I.D. 119

A notice of violation containing an improper citation to the regulations is reasonably specific where the narrative description of the alleged violation accurately notifies the permittee of the nature of the alleged violation.

Island Creek Coal Co., 2 IESMA 125 (July 3, 1980) 87 I.L. 304

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

NOTICES OF VIOLATION--Continued

Specificity--Continued

Under the circumstances of this case, it was error for the Administrative Law Judge to vacate a notice of violation on his own motion on the grounds that it lacked reasonable specificity as required by sec. 521(a)(5) of the Act when the parties expressed no confusion about the nature of the alleged violation.

Grafton Coal Co., Inc., 2 IESMA 316 (Nov. 4, 1980) 87 I.L. 521

When a notice of violation is issued on the basis of an alleged violation of a regulation, but the regulation was amended prior to the inspection, the notice may be sustained only if the condition cited clearly remains a violation under the amendments and is so stated that the permittee knows or should know the nature of the violation cited and the remedial action required.

Hardly Able Coal Co., 2 IESMA 332 (Nov. 7, 1980) 87 I.L. 557

A notice of violation is reasonably specific, in accordance with 30 U.S.C. § 1271(a)(5) (Supp. II 1978), when it is sufficient to guide the review and abatement processes without actual prejudice to the recipient as the result of any ambiguity in the notice.

Benfro Construction Co., Inc., 2 IESMA 372 (Nov. 26, 1980) 87 I.L. 584

PREVIOUSLY MINED LANDS

Generally

All surface water drainage from the area disturbed by surface mining and reclamation operations must comply with the effluent limitations of 30 CFR 715.17(a) even if it originates as contaminated ground water from previously mined areas.

Cravat Coal Co., Inc., 2 IESMA 249 (Sept. 23, 1980) 87 I.L. 416

Where a surface coal mining operation affects previously mined lands, the fact that an alleged violation could have existed before the present operation does not relieve the permittee from responsibility for the violation.

Central Oil and Gas, Inc., 2 IESMA 308 (Oct. 23, 1980) 87 I.L. 454

REVEGETATION

Generally

A violation of 30 CFR 715.20(c) is proven when it is demonstrated that the temporary cover of small grains, grasses, or legumes seeded by an operator is inadequate to control erosion until a permanent cover is established, and that the operator has failed to take other measures to control erosion from the disturbed area.

Benfro Construction Co., Inc., 2 IESMA 372 (Nov. 26, 1980) 87 I.L. 584

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ROADS

Generally

The exception clause in sec. 522(e) (4) of the Act is not intended to allow mining activity near the junction of a mine access or haul road with a public road; its purpose is merely to allow access or haul roads to join public roads by excepting them from the setback requirement.

Central Oil and Gas, Inc., 2 IBSMA 308 (Oct. 23, 1980)
87 I.D. 494

In a steep slope mining operation all highwalls must be completely backfilled after mining is concluded, even where retention of an access road has been approved as part of a postmining land use.

Tollage Creek Elkhorn Mining Co., 2 IBSMA 341
(Nov. 24, 1980) 87 I.D. 570

Maintenance

A partially constructed access road, if used to facilitate mining operations, is a road for purposes of the initial regulatory program and therefore subject to the maintenance requirements of 30 CFR 717.17(j) (3) (i).

Zapata Coal Corp., 2 IBSMA 9 (Jan. 22, 1980)
87 I.D. 11

SIGNS AND MARKERS

Generally

The requirement of 30 CFR 715.12(b) that mine and permit identification signs be maintained until the release of all bonds is violated if such signs are not present during an inspection and the permittee has not exercised reasonable diligence to maintain them.

Fell Energy Coal Corp., 2 IBSMA 34 (Mar. 28, 1980)
87 I.D. 114

Mine identification and blasting signs must be located as required by 30 CFR 715.12(b) and (e).

Capitol Fuels, Inc., 2 IBSMA 261 (Sept. 24, 1980)
87 I.D. 430

SMALL OPERATORS

Generally

A party seeking to estop the Office of Surface Mining Reclamation and Enforcement from asserting that the party did not have a small operator exemption for a particular permit must clearly demonstrate its entitlement to the estoppel.

Daniel Bros. Coal Co., 2 IBSMA 45 (Apr. 10, 1980)
87 I.D. 138

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

SPECIAL AND MINE WASTES

Downslope

"Downslope." The downslope in a multiple seam or multiple highwall mining operation is the land surface between a valley floor and the projected outcrop of the lowest coalbed being mined along each highwall, not the area between a valley floor and the projected outcrop of the lowest coalbed under permit.

Island Creek Coal Co., 2 IBSMA 125 (July 3, 1980)
87 I.D. 304

Toptiki Coal Corp., 2 IBSMA 173 (July 28, 1980)
87 I.D. 331

STATE REGULATION

Generally

Under the circumstances of this case, sufficient evidence was presented to show that unforeseen circumstances arose during regrading, that the state regulatory authority approved a change to the permit under its established procedures, and that the change was carried out in accordance with the requirements of 30 CFR 715.14(b).

Because OSM is entitled to rely on the permit package as evidence of the conditions under which mining and reclamation have been approved, the failure of a state regulatory authority to require written documentation of approved permit changes to be placed in the permit package exposes a permittee to potential liability under the Act.

Grafton Coal Co., Inc., 2 IBSMA 316 (Nov. 4, 1980)
87 I.D. 521

The requirement of sec. 505(b) of the Act, 30 U.S.C. § 1255(b) (Supp. II 1978), that the Secretary of the Interior set forth any state law or regulation which is construed to be inconsistent with the Act does not impose the obligation on the Secretary of designating every state interpretation of state law which might be inconsistent with federal law.

Tollage Creek Elkhorn Mining Co., 2 IBSMA 341
(Nov. 24, 1980) 87 I.D. 570

During the initial regulatory program a critical determinant of the jurisdiction of the Office of Surface Mining Reclamation and Enforcement over a surface coal mining operation conducted on lands within a state is whether the operation is subject to state regulation within the scope of any of the initial Federal performance standards.

Blackwood Fuel Co., Inc., 2 IBSMA 359 (Nov. 24, 1980)
87 I.D. 579

TEMPORARY RELIEF

Generally

43 CFR 4.1260 does not authorize temporary relief from the requirement of 43 CFR 4.1152(b) that a proposed civil penalty be paid into escrow pending a final determination on the merits of the case.

Cravat Coal Co., Inc., 2 IBSMA 249 (Sept. 23, 1980)
87 I.D. 416

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

TEMPORARY RELIEF--Continued

Applications

Where an application for temporary relief includes none of the elements required by 43 CFR 4.1263, a motion to dismiss the application should be granted.

Mauersberg Coal Co., 2 IBSMA 63 (May 16, 1980)
87 I.L. 176

Evidence

Where an applicant for temporary relief fails to provide sufficient evidence to support the showings required by sec. 525(c) of the Act, it is error to grant such relief.

Mauersberg Coal Co., 2 IBSMA 63 (May 16, 1980)
87 I.L. 176

TIPPLES AND PROCESSING PLANTS

At or Near a Minesite

"Surface coal mining operations." Where a coal processing facility is functionally and economically integrated with several neighboring surface coal mines but is 9 miles distant from the closest of those mines, that facility may be "near" a minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Drummond Coal Co., 2 IBSMA 96 (June 3, 1980)
87 I.L. 196

A preparation plant which is located 1 mile from a deep mine that processes its coal through the plant and which is permitted to the same person as is the mine is both at or near the mine and operated in connection with the mine.

Virginia Iron, Coal & Coke Co., 2 IBSMA 165 (July 28, 1980)
87 I.L. 327

"Surface coal mining operations." Where a coal processing facility is found to be operated in connection with a surface coal mine and is located less than 15 miles from three active surface mining pits, that facility is "near" the minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5 under the circumstances of this case.

Drummond Coal Co., 2 IBSMA 189 (Aug. 6, 1980)
87 I.L. 347

"Surface coal mining operations." A coal loading facility functionally and economically integrated with a commonly controlled coal mine located 2 miles away may be "near" a minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Bethlehem Mines Corp., 2 IBSMA 215 (Aug. 29, 1980)
87 I.L. 380

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

TIPPLES AND PROCESSING PLANTS--Continued

At or Near a Minesite--Continued

"Surface Coal Mining Operation." A tippie located 200-300 feet from a minesite is a "surface coal mining operation" within the meaning of 30 CFR 700.5 when the tippie processes and stores all of the coal extracted from that mine, the mine is owned by the owners of the corporation owning the tippie, and the mine was leased in order to supply coal to the tippie.

Roberts Brothers Coal Co., Inc., 2 IBSMA 284 (Sept. 26, 1980)
87 I.L. 439

"Surface coal mining operations." When a tippie is operated in connection with two surface coal mines and is located 7 and 13 miles from those mines, that tippie is held to be "near" the minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Wolverine Coal Corp., 2 IBSMA 325 (Nov. 7, 1980)
87 I.L. 554

"Surface coal mining operations." Where a coal loading facility is found to be operated in connection with several neighboring coal mines but is 11.2 miles distant from the closest of those mines, the facility may be "near" a minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Falcon Coal Co., Inc., 2 IBSMA 406 (Dec. 31, 1980)
87 I.L. 669

In Connection With

"Surface coal mining operations." Where a coal processing facility is owned by the same company that owns all the mines that supply coal to it, that facility may conduct activities "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Drummond Coal Co., 2 IBSMA 96 (June 3, 1980)
87 I.L. 196

A preparation plant which is located 1 mile from a deep mine that processes its coal through the plant and which is permitted to the same person as is the mine is both at or near the mine and operated in connection with the mine.

Although a contract, lease, or sell-back arrangement may be sufficient to establish a connection between a coal mine and a processing facility, the nature of that arrangement must be proved.

Virginia Iron, Coal & Coke Co., 2 IBSMA 165 (July 28, 1980)
87 I.L. 327

"Surface coal mining operations." Where a coal processing facility is owned and operated by the same company that owns and operates the mine supplying most of the coal to the facility, that facility is operated "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5 under the circumstances of this case.

Drummond Coal Co., 2 IBSMA 189 (Aug. 6, 1980)
87 I.L. 347

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

TIPPLES AND PROCESSING PLANTS--Continued

In Connection With--Continued

"Surface coal mining operations." A coal loading facility controlled by the same company that owns the mine supplying coal to it may conduct activities "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Bethlehem Mines Corp., 2 IBSMA 215 (Aug. 29, 1980)
87 I.L. 380

"Surface Coal Mining Operation." A tippie located 200-300 feet from a minesite is a "surface coal mining operation" within the meaning of 30 CFR 700.5 when the tippie processes and stores all of the coal extracted from that mine, the mine is owned by the owners of the corporation owning the tippie, and the mine was leased in order to supply coal to the tippie.

Roberts Brothers Coal Co., Inc., 2 IBSMA 284 (Sept. 26, 1980)
87 I.L. 439

"Surface coal mining operations." When a tippie is owned and operated by the same company that owns and operates the two mines supplying most of the coal processed through the tippie, that tippie is operated "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Wolverine Coal Corp., 2 IBSMA 325 (Nov. 7, 1980)
87 I.L. 554

"Surface coal mining operations." A coal loading facility operated and controlled by the same company that owns and operates the mines supplying coal to it is being conducted "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Falcon Coal Co., Inc., 2 IBSMA 406 (Dec. 31, 1980)
87 I.L. 669

TOPSOIL

Alternative Materials

A state regulatory authority may rely on data published by the Department of Agriculture Soil Conservation Service on established soil series in comparing native topsoil to proposed alternative materials under 30 CFR 715.16.

Alabama By-Products Corp., 2 IBSMA 298 (Sept. 30, 1980)
87 I.L. 446

VARIANCES AND EXEMPTIONS

Generally

Evidence concerning an alternative method of silt control does not show compliance with the sedimentation pond requirement of 30 CFR 715.17(a); such evidence may be presented to the regulatory authority which may grant exemptions to that requirement.

Black Fox Mining & Development Corp., 2 IBSMA 110 (June 6, 1980)
87 I.L. 207

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

VARIANCES AND EXEMPTIONS--Continued

Generally--Continued

The regulatory authority must specifically authorize the disturbing of an area by surface coal mining operations within 100 feet of an intermittent or perennial stream, and that requirement necessitates a variance procedure involving specific review and evaluation of proposals.

G. B. Wright, Inc., 2 IBSMA 180 (July 29, 1980)
87 I.L. 333

When a permittee does not have approval from the regulatory authority for an exemption from the requirements of the Act at the time of an CSM inspection, the inspector may properly require remedial action of a reclamation nature in a notice of violation.

Hardly Able Coal Co., 2 IBSMA 270 (Sept. 24, 1980)
87 I.L. 434

When a permittee alleges that a violation of the effluent limitations of 30 CFR 715.17(a) occurred because of unusual precipitation conditions, under 30 CFR 715.17(a)(1) it bears the burden of demonstrating entitlement to an exemption from those limitations.

Hardly Able Coal Co., 2 IBSMA 332 (Nov. 7, 1980)
87 I.L. 557

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS

Generally

When a permittee alleges that a violation of the effluent limitations of 30 CFR 715.17(a) occurred because of unusual precipitation conditions, under 30 CFR 715.17(a)(1) it bears the burden of demonstrating entitlement to an exemption from those limitations.

Hardly Able Coal Co., 2 IBSMA 332 (Nov. 7, 1980)
87 I.L. 557

Discharges from Disturbed Areas

All surface water drainage from the area disturbed by surface mining and reclamation operations must comply with the effluent limitations of 30 CFR 715.17(a) even if it originates as contaminated ground water from previously mined areas.

Cravat Coal Co., Inc., 2 IBSMA 249 (Sept. 23, 1980)
87 I.L. 416

A violation of 30 CFR 715.17(a) for failure to pass surface drainage through a sedimentation pond may be established for a surface coal mining operation that is not required by a state to have a permit by showing that there is surface drainage, that it does not pass through a sedimentation pond, and that it leaves the disturbed area.

Black Fox Mining & Development Corp., 2 IBSMA 277 (Sept. 24, 1980)
87 I.L. 437

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS--Continue

Sedimentation Ponds

The sedimentation pond requirement of 30 CFR 715.17(a) is a preventive measure and proof of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of that requirement.

Black Fox Mining & Development Corp., 2 IBSMA 110 (June 6, 1980) 87 I.D. 207

The sedimentation pond requirement of 30 CFR 715.17(a) and 717.17(a) is a preventive measure and proof of the harm it is intended to prevent is not necessary to establish a violation of that requirement.

Kaiser Steel Corp., 2 IBSMA 158 (July 25, 1980) 87 I.D. 324

A violation of 30 CFR 715.17(a) for failure to pass surface drainage through a sedimentation pond may be established for a surface coal mining operation that is not required by a state to have a permit by showing that there is surface drainage, that it does not pass through a sedimentation pond, and that it leaves the disturbed area.

Black Fox Mining & Development Corp., 2 IBSMA 277 (Sept. 24, 1980) 87 I.D. 437

WORDS AND PHRASES

"Cemetery." The term cemetery as it is used in sec. 522(e) (5) of the Act, 30 U.S.C. § 1272(e) (5) (Supp. II 1978), may include a private burial ground.

Marietta Coal Co., 2 IBSMA 382 (Nov. 26, 1980) 87 I.D. 589

"Downslope." The downslope in a multiple seam or multiple highwall mining operation is the land surface between a valley floor and the projected outcrop of the lowest coalbed being mined along each highwall, not the area between a valley floor and the projected outcrop of the lowest coalbed under permit.

Island Creek Coal Co., 2 IBSMA 125 (July 3, 1980) 87 I.D. 304

Toptiki Coal Corp., 2 IBSMA 173 (July 28, 1980) 87 I.D. 331

"Permit area." During the initial regulatory program, when a facility otherwise included within the meaning of "surface coal mining operations" is not specifically covered by a permit, the "permit area" is at least coextensive with the disturbed area.

Bethlehem Mines Corp., 2 IBSMA 215 (Aug. 29, 1980) 87 I.D. 380

"Permit area." During the initial regulatory program, when a facility otherwise included within the meaning of "surface coal mining operations" is not specifically covered by a permit, the "permit area" is at least coextensive with the disturbed area.

Black Fox Mining & Development Corp., 2 IBSMA 277 (Sept. 24, 1980) 87 I.D. 437

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WORDS AND PHRASES--Continued

"Surface coal mining operations." Where a coal processing facility is owned by the same company that owns all the mines that supply coal to it, that facility may conduct activities "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

"Surface coal mining operations." Where a coal processing facility is functionally and economically integrated with several neighboring surface coal mines but is 9 miles distant from the closest of those mines, that facility may be "near" a minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Drummond Coal Co., 2 IBSMA 96 (June 3, 1980) 87 I.D. 196

"Surface coal mining operations." Where a coal processing facility is owned and operated by the same company that owns and operates the mine supplying most of the coal to the facility, that facility is operated "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5 under the circumstances of this case.

"Surface coal mining operations." Where a coal processing facility is found to be operated in connection with a surface coal mine and is located less than 15 miles from three active surface mining pits, that facility is "near" the minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5 under the circumstances of this case.

Drummond Coal Co., 2 IBSMA 189 (Aug. 6, 1980) 87 I.D. 347

"Surface coal mining operations." A coal loading facility controlled by the same company that owns the mine supplying coal to it may conduct activities "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

"Surface coal mining operations." A coal loading facility functionally and economically integrated with a commonly controlled coal mine located 2 miles away may be "near" a minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Bethlehem Mines Corp., 2 IBSMA 215 (Aug. 29, 1980) 87 I.D. 380

"Surface coal mining operation." A tippie located 200-300 feet from a minesite is a "surface coal mining operation" within the meaning of 30 CFR 700.5 when the tippie processes and stores all of the coal extracted from that mine, the mine is owned by the owners of the corporation owning the tippie, and the mine was leased in order to supply coal to the tippie.

Roberts Prothers Coal Co., Inc., 2 IBSMA 284 (Sept. 26, 1980) 87 I.D. 439

"Surface coal mining operations." When a tippie is owned and operated by the same company that owns and operates the two mines supplying most of the coal processed through the tippie, that tippie is operated "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

"Surface coal mining operations." When a tippie is operated in connection with two surface coal mines and is located 7 and 13 miles from those mines, that tippie is held to be "near" the minesite within the

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

WORDS AND PHRASES--Continued

meaning of "surface coal mining operations" in 30 CFR 700.5.

Wolverine Coal Corp., 2 IBSMA 325 (Nov. 7, 1980)
87 I.L. 554

"Surface coal mining operations." A coal loading facility operated and controlled by the same company that owns and operates the mines supplying coal to it is being conducted "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

"Surface coal mining operations." Where a coal loading facility is found to be operated in connection with several neighboring coal mines but is 11.2 miles distant from the closest of those mines, the facility may be "near" a minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Falcon Coal Co., Inc., 2 IBSMA 406 (Dec. 31, 1980)
87 I.L. 669

SURFACE RESOURCES ACT

(See also Hearings, Mining Claims--if included in this Index.)

GENERALLY

Sec. 3 of the Surface Resources Act of July 23, 1955, 69 Stat. 367, 368, 30 U.S.C. § 611 (1976), declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980)
87 I.L. 386

APPLICABILITY

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

HEARINGS

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, an appraisal will be sustained in the absence of an offer of specific substantial evidence that it is incorrect.

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

SURPLUS PROPERTY

(See also Federal Property & Administrative Services Act--if included in this Index.)

Cil and gas lease offers embracing lands withdrawn specifically from oil and gas leasing and by Public Land Order No. 674, of Oct. 7, 1950, reserved for an agency of the Department of Defense, are properly rejected. Lands declared surplus are not subject to leasing by this Department.

Edward C. Shepardson, 47 IBLA 223 (May 13, 1980)

SURVEYS OF PUBLIC LANDS

(See also Boundaries, Public Lands--if included in this Index.)

DEPENDENT RESURVEYS

Where, at a hearing, a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed.

Ethel C. Vernon, 47 IBLA 315 (May 19, 1980)

SWAMPLANDS

(See also State Selections--if included in this Index.)

The burden of proof as to the character of land applied for under the Swamp Land Acts falls upon the applicant.

Where an 1855 Federal survey and plat suggests that certain lands may have been swamp and overflowed and appellants present substantial additional documentation revealing a long term consistent characterization of the land as swamp and overflowed, this Board will make a finding of fact that the lands were swamp and overflowed within the meaning of the Swamp Land Acts.

State of California, Stockdale Development Corp., 51 IBLA 3 (Oct. 28, 1980)

TAYLOR GRAZING ACT

(See also Grazing Leases, Grazing Permits & Licenses--if included in this Index.)

GENERALLY

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Protection and management of Federal range lands is a continuing responsibility and may not be divested through agreement with a private party. An allotment management plan is not such a permanently binding contract that the grazing user's refusal to agree to changes precludes BLM from modifying or vacating the plan upon a finding, rationally based, that the plan is inconsistent with BLM objectives and good range management.

Bert N. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

TIMBER SALES AND DISPOSALS

Where a programmatic environmental impact statement (EIS) has been completed and this has been supplemented by a site-specific environmental analysis concerning the impacts, mitigating measures, and alternatives for a specified timber sale, the law does not require preparation of an individual EIS for the timber sale in the absence of a material change in circumstances or departure from policy covered in the overall EIS.

A decision by BLM to proceed with a proposed timber sale which was made after consideration of all relevant factors and which is supported by the record will not be set aside in the absence of a showing that the decision is clearly in error.

Preserve Our Scenic Environment, 47 IBLA 276 (May 15, 1980)

A decision by a BLM district office to proceed with a proposed timber sale which was made after consideration of all relevant factors and which is supported by the record will not be set aside in the absence of a showing that the decision is clearly in error.

Ernest J. Goertzen, 51 IBLA 196 (Dec. 5, 1980)

TOWNSITES

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of an occupancy claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

Royal Harris, 45 IBLA 87 (Jan. 17, 1980)

Dennis L. Lattery, 45 IBLA 219 (Jan. 31, 1980)

Darrell F. Riggs, Karen Sue Riggs, 46 IBLA 132 (Mar. 19, 1980)

Dorothea M. Taylor, Robert Taylor, 46 IBLA 198 (Mar. 24, 1980)

Thomas Taggart, 46 IBLA 350 (Apr. 8, 1980)

George W. Murphy, 48 IBLA 123 (May 30, 1980)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right.

Marko and Yarrow Lewis, 46 IBLA 257 (Mar. 27, 1980)

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790. A claim under the townsite laws will be rejected where appellants have submitted no proof that they occupied the land prior to the effective date of FLPMA, Oct. 21, 1976, thus giving them a valid existing right which would have survived FLPMA.

Patsy Karl Neakok, Smiley A.C. Neakok, 48 IBLA 377 (July 11, 1980)

TOWNSITES--Continued

Where lands have been identified as being within a townsite by inclusion in an approved U.S. survey of the exterior boundaries of the townsite; where the townsite trustee duly receives title to these lands by patent and opens the area to settlement under the townsite laws; and where individuals, acting in reliance on explicit statements by the trustee that it is legal to do so, timely initiate settlement under governing Departmental regulations, a decision by the trustee to cancel the settlers' claims in order to reduce the size of the townsite to conform with the statutory limit will be vacated, and he will be directed instead to correct the patent by eliminating lands other than those occupied by the settlers.

A Native village corporation has no interest in lands included in a townsite prior to the enactment of the Alaska Native Claims Settlement Act, as the lands were segregated prior to this date so that ANCSA did not withdraw the lands for selection by the corporation. Accordingly, the rights of settlers and of the municipality which derive from an entitlement created prior to the Alaska Native Claims Settlement Act, are superior to the corporation's rights.

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated.

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of an occupancy claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

TRESPASS

GENERALLY

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

MEASURE OF DAMAGES

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, an appraisal will be sustained in the absence of an offer of specific substantial evidence that it is incorrect.

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY
ACQUISITION POLICIES ACT OF 1970
(See also Appeals--if included in this Index.)

UNIFORM RELOCATION ASSISTANCE

Generally

Qualification as a "displaced person," in accordance with 42 U.S.C. § 4601(6) (1976) and 41 CFR 114-50.201(f), may be established by a showing that the claimant moved personal property from real property acquired from the claimant by the United States, as a result of such acquisition.

Uniform Relocation Assistance Appeal of James Karl Lothmann, 4 OHA 86 (Oct. 31, 1980)

Moving and Related Expenses

Generally

Where the record evidence shows persons displaced from lands acquired for the Big Cypress National Preserve were allowed a moving expense payment in an amount determined to be the amount of reasonable expenses which would have been incurred in a move from the acquired site to a replacement site approximately 50 miles beyond the boundary of the Preserve, the determination will be affirmed as in conformity with provisions of § 202(a) (1) of the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mr. Gomer Jones, 3 OHA 173 (Jan. 31, 1980)

Expenses for wiring and installation of water softener facilities in the replacement dwelling are not reimbursable where they are shown to represent costs for adding facilities to the replacement dwelling rather than costs for reestablishment and reconnection of such facilities for personal property owned by the claimants and moved from the acquired dwelling to the replacement dwelling.

Withdrawal, at the hearing, of a claim for damage in moving of a printing press from the acquired dwelling to the replacement dwelling will be accepted since such expenses are not reimbursable. The Department's regulations provide for reimbursement of expenses incurred for insurance premiums covering damage of personal property while in transit.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Harold W. Steffen, 3 OHA 179 (Mar. 13, 1980)

Where the record evidence shows the claimants have established their entitlement to reimbursement for actual reasonable moving and related expenses in an amount greater than that authorized by the Park Service in the decision appealed from, the decision will be modified to increase the allowance for such expenses, as appropriate.

Reimbursement is not allowable for costs of storage of certain tools and farm equipment where no evidence is submitted to show that such costs were paid.

Estimated losses for damage to an arc welder and a fanning mill in the process of moving will not be allowed where the arc welder was dropped during the process of loading it on a pickup and the claimants have not established that the damage to the fanning mill has impaired its usefulness.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Jesse W. Baysinger, 4 OHA 1 (Apr. 23, 1980)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY
ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Moving Expense Allowance

Generally

Where a claimant has not established that he is entitled to more than the sum he applied for and received as moving expense and relocation allowances under § 202 of the Act, in lieu of actual reasonable moving and related expenses, no change is warranted in the determination made.

Uniform Relocation Assistance Appeal of Mr. Ray K. Davis, 4 OHA 20 (June 23, 1980)

Payments in Lieu of Moving and Related Expenses

Generally

Eligibility for payments in lieu of moving and related expenses, pursuant to 41 CFR Subpart 114-50.7, depends on the nature of the claimant's status as a displaced person, and when the status is not shown to be related to displacement from a farm operation or business the claimant is not eligible for payments pursuant to 41 CFR 114-50.702 through 114-50.703.2.

Uniform Relocation Assistance Appeal of James Karl Lothmann, 4 OHA 86 (Oct. 31, 1980)

Fixed Payments

Taking of Business Operation

A claim for a fixed payment under sec. 202(c) of the Act for displacement from a business on acquired lands, in lieu of actual reasonable moving and related expenses under sec. 202(a) of the Act, was properly determined on the basis of average annual net earnings of the business as shown in the claimants' Federal income tax returns for the applicable period.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James H. Rose, 3 OHA 191 (Mar. 24, 1980)

Uniform Relocation Assistance Appeal of Mr. and Mrs. Alfred Mason, 4 OHA 36 (Aug. 6, 1980)

Replacement Housing Payment for Homeowners

Generally

The comparability study undertaken by the agency to determine replacement housing differential payment was based on incorrect data regarding lot size of the agency acquired dwelling. The study, which placed importance on lot comparisons, therefore failed to include replacement dwellings most representative of the dwelling acquired.

The comparability study undertaken by the agency to determine replacement housing differential payment failed to include waterfront properties even though the agency acquired property possessed waterfront and similar properties could be found within a 50-mile radius of the acquired property.

The "comparable replacement dwelling" relied upon by the agency in computing a replacement housing differential payment to the claimants resulted in an unjust and inequitable award. Because the "comparable replacement dwelling" used by the agency is much smaller in lot size than the acquired dwelling and lacks waterfront characteristics, it cannot be considered "functionally equivalent and substantially the

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY
ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Generally--Continued

same as the acquired dwelling" as that term is used in the Department's regulations.

Uniform Relocation Assistance Appeal of Mr. and Mrs. F. Lawrence Harmon, 3 OHA 168 (Jan. 30, 1980)

Where the record shows that the replacement housing differential payment authorized by the Park Service represents an amount which, when added to the acquisition cost of the dwelling acquired, meets the reasonable cost of a comparable replacement dwelling which is decent, safe and sanitary, adequate to accommodate the displaced persons, reasonably accessible to public services and places of employment, available on the private market, and otherwise in compliance with regulatory standards of the Department, the Park Service determination will be affirmed.

A claim under sec. 203(a) (1) (B) of the Act for reimbursement of costs for a loan origination fee incurred by the claimants in purchasing their replacement dwelling is properly disallowed where the record shows the acquired dwelling was not encumbered by a mortgage.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Harold W. Steffen, 3 OHA 179 (Mar. 13, 1980)

For the purpose of a determination of what constitutes a "comparable replacement dwelling," made pursuant to sec. 203(a) (1) (A) of the Act and 41 CFR 114-50.201(d), it is not necessary that the replacement dwelling be identical to the one taken. If the lot, neighborhood, and dwelling utilized as the standard for comparison are substantially comparable, the comparability requirement has been met.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Gilbert Scheidt, 4 OHA 15 (June 11, 1980)

Where the record shows replacement housing supplement payment benefits allowed under § 203 of the Act represent an amount which, when added to the acquisition cost of the dwelling acquired, equals the cost of a comparable replacement dwelling, including expenses incurred by the displaced person for closing costs incident to the purchase of the replacement dwelling, the allowance will be affirmed.

Uniform Relocation Assistance Appeal of Mr. Ray K. Davis, 4 OHA 20 (June 23, 1980)

Where the record evidence shows that the dwelling on the acquired lands was a seasonal or part-time residence and not the permanent or customary and usual abode of the claimants, the claimants are ineligible to receive replacement housing payment benefits under § 203 of the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Raymond C. Walsh, 4 CHA 39 (Aug. 12, 1980)

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UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY
ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Waiver of Benefits

Persons who elected to retain a right of use and occupancy of a cabin acquired by the United States are deemed to have waived any replacement housing payment benefits under § 203 of the Act.

Uniform Relocation Assistance Appeal of Mr. Joseph J. Jirik, 4 OHA 11 (May 12, 1980)

Replacement Housing Payment for Tenants and Certain Others

Persons who elected to retain a right of use and occupancy of a cabin acquired by the United States are deemed to have waived any replacement housing payment benefits under § 204 of the Act.

Uniform Relocation Assistance Appeal of Mr. Joseph J. Jirik, 4 CHA 11 (May 12, 1980)

Where claimants subleased or rented space in a house leased by another under an agreement prohibiting subleases or subletting in a location where local zoning regulations proscribed subletting to roomers, and where claimants were not related to their lessor, claimants are not entitled to rental benefits under the Act and Departmental regulations.

Uniform Relocation Assistance Appeal of Kevin Fickard & Robert Winston, 4 OHA 30 (July 2, 1980)

A determination of ineligibility for a rental replacement housing payment under § 204 of the Act will be affirmed where the evidence shows more than one year elapsed from the time the claimant moved from his rental unit on the Government-acquired property to the time he commenced occupancy of his replacement rental unit.

Uniform Relocation Assistance Appeal of Mr. William K. Friedman, 4 CHA 33 (July 30, 1980)

WATER AND WATER RIGHTS

GENERALLY

When considering applications for rights-of-way privileges, the Department of the Interior has no power to determine questions of control and appropriation of water rights as between private parties, as such questions are exclusively matters of state law.

East Canyon Irrigation Co., 47 IEIA 155 (May 6, 1980)

STATE LAWS

When considering applications for rights-of-way privileges, the Department of the Interior has no power to determine questions of control and appropriation of water rights as between private parties, as such questions are exclusively matters of state law.

East Canyon Irrigation Co., 47 IEIA 155 (May 6, 1980)

WILDLIFE REFUGES AND PROJECTS

(See also Exchanges of Land, Migratory Bird Conservation Act--if included in this Index.)

GENERALLY

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Carol Lee Hatch, 45 IBLA 4 (Jan. 8, 1980)

John R. Anderson, 46 IBLA 123 (Feb. 29, 1980)

Ida Lee Anderson, 46 IBLA 385 (Apr. 10, 1980)

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1976).

Dean W. Rowell, 45 IBLA 225 (Jan. 31, 1980)

Tucker & Snyder Exploration, Inc., 49 IBLA 176 (July 30, 1980)

John R. Anderson, 50 IBLA 38 (Sept. 9, 1980)

Lands within a proposed addition to the National Desert Wildlife Range are not subject to noncompetitive oil and gas leasing because the proposed withdrawal, if effective, would preclude oil and gas leasing, the same as the existing withdrawal.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Tucker & Snyder Exploration, Inc., 45 IBLA 248 (Feb. 4, 1980)

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Lake Ilo National Wildlife Refuge is not subject to oil and gas leasing unless the lands are subject to drainage.

David A. Provinse, 49 IBLA 134 (July 28, 1980)

WITHDRAWALS AND RESERVATIONS

GENERALLY

An oil and gas lease offer for minerals reserved to the United States is properly rejected where the Secretary of the Interior in a notice published in the Federal Register has declared that such minerals will not be subject to leasing.

David A. Provinse, 45 IBLA 8 (Jan. 8, 1980)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

Oil and gas lease offers embracing lands withdrawn specifically from oil and gas leasing and by Public Land Order No. 674, of Oct. 7, 1950, reserved for an agency of the Department of Defense, are properly rejected. Lands declared surplus are not subject to leasing by this Department.

Edward C. Shepardsen, 47 IBLA 223 (May 13, 1980)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act, 43 U.S.C. § 641 (1976), must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources, 48 IBLA 250 (June 26, 1980)

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for geothermal resources leasing, and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

Trent J. Parker, 49 IBLA 209 (Aug. 11, 1980)

The Carey Act does not give a state an absolute entitlement to select and reserve desert land acreage regardless of whether or not it has been withdrawn for other purposes. Rather, the Act does not prevent the Secretary from committing such land for any authorized use, including use as a stock driveway. Moreover, the Department has broad discretionary authority to reject Carey Act applications for lands not withdrawn from selection, subject to normal judicial restraints against arbitrary and capricious administrative actions.

Applications filed for segregation of land for proposed development under the Carey Act must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources (On Reconsideration), 49 IBLA 221 (Aug. 12, 1980)

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for airport purposes and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper under the regulations to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

Ronald Efferson, 50 IBLA 267 (Sept. 30, 1980)

Where the Secretary of the Interior has specifically determined by formal publication of a memorandum that lands in a certain section of a national forest are to be withheld from leasing, he has exercised his

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

plenary discretion to refuse to issue leases, and subsequent offers for affected lands are properly rejected.

James R. Learned et al., 50 IBLA 416 (Oct. 24, 1980)

Where an application for withdrawal proposes to withdraw certain lands from the operation of the mineral leasing and mining laws to prevent interference with the use of the land for airport purposes, the Bureau of Land Management should suspend action on oil and gas lease offers filed subsequent to the withdrawal application pending final action on the proposed withdrawal.

Trent J. Parker, 51 IBLA 178 (Dec. 2, 1980)

Lands withdrawn for reclamation purposes are not available for disposition under the public land laws, including the Indian Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), and an application thereunder for land so withdrawn is properly rejected.

James A. Fort, 51 IBLA 285 (Dec. 15, 1980)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

AUTHORITY TO MAKE

A mining claim for metalliferous minerals located on land withdrawn from appropriation under the mining laws pursuant to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1976), which provides that as to metalliferous minerals the withdrawn land shall remain open to the operation of the mining laws, is nevertheless null and void from its inception where the land is also withdrawn pursuant to the President's nonstatutory authority to make withdrawals.

Glen E. Brooks, E. Allen Brooks, & Corp., 45 IBLA 51 (Jan. 14, 1980)

EFFECT OF

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Conrad F. Sovik, 45 IBLA 14 (Jan. 8, 1980)

Jacqueline E. Nelson, 47 IBLA 12 (Apr. 10, 1980)

W. Speakman, J. Antrim, 51 IBLA 283 (Dec. 15, 1980)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

A mining claim for metalliferous minerals located on land withdrawn from appropriation under the mining laws pursuant to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1976), which provides that as to metalliferous minerals the withdrawn land shall remain open to the operation of the mining laws, is nevertheless null and void from its inception where the land is also withdrawn pursuant to the President's nonstatutory authority to make withdrawals.

Glen E. Brooks, E. Allen Brooks, & Corp., 45 IBLA 51 (Jan. 14, 1980)

Oil and gas lease offers embracing lands withdrawn specifically from oil and gas leasing and by Public Land Order No. 674, of Oct. 7, 1950, reserved for an agency of the Department of Defense, are properly rejected. Lands declared surplus are not subject to leasing by this Department.

An oil and gas lease offer filed for land which has been previously withdrawn from mineral leasing may be properly rejected since it will not be validated by any future modification or revocation of the order of withdrawal. It is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

Edward C. Sheppardson, 47 IBLA 223 (May 13, 1980)

When land is withdrawn from the operation of the mining laws subject to valid existing rights, as was the Death Valley National Monument on Sept. 28, 1976, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Ubehebe Lead Mines Co., 49 IBLA 1 (July 15, 1980)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Where a mining claim located on land withdrawn at the time of location is declared void ab initio, such a location, and the decision declaring such a location void, do not affect the status of any location of the same land made prior to the withdrawal; nor can such a location, made by a party with an interest in the prior location, reestablish or protect rights to the prior claim.

Jack C. Franks, 49 IBLA 162 (July 30, 1980)

A mining claim located on land temporarily segregated from appropriation under the mining laws pursuant to 43 U.S.C. § 1714(b) (1976) is null and void ab initio.

Under 43 U.S.C. § 1714(b) (1976) a publication in the Federal Register of notification of an application for withdrawal, which publication temporarily segregates land from the operation of the mining laws, does not withdraw the land, and therefore the notice need not be signed by the Secretary or an individual in the Office of the Secretary who has been appointed by the President, by and with the advice and consent of the Senate.

Stephen W. Fox, 50 IBLA 186 (Sept. 30, 1980)

87 I.D. 462

WITHDRAWALS AND RESERVATIONS--ContinuedEFFECT OF--Continued

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

George H. Fennimore et al., 50 IBLA 280 (Oct. 6, 1980)

Mining claims located on land at a time the land is withdrawn from appropriation under the United States mining laws properly are declared null and void ab initio.

Marvin Mack, Betty K. Mack, 51 IBLA 30 (Oct. 30, 1980)

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of a withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location.

United States v. W. S. Wood et al., 51 IBLA 301 (Dec. 18, 1980) 87 I.D. 628

POWERSITES

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Harold M. Voris, 48 IBLA 206 (June 16, 1980)

RECLAMATION WITHDRAWALS

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Water and Power Resources Service has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Florence Adkisson, 47 IBLA 121 (Apr. 28, 1980)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act, 43 U.S.C. § 641 (1976), must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources, 48 IBLA 250 (June 26, 1980)

Applications filed for segregation of land for proposed development under the Carey Act must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources (On Reconsideration), 49 IBLA 221 (Aug. 12, 1980)

WITHDRAWALS AND RESERVATIONS--ContinuedREVOCACTION AND RESTORATION

A Presidential proclamation, which extended the boundaries of a forest reserve and which specifically stated that prior proclamations respecting the reserve were "superseded," had the effect of and was construed as restoring to entry lands earlier withdrawn by a Secretarial order which reserved from public entry, for protection of giant sequoia trees, a township situated within the boundaries of the forest reserve. This conclusion is particularly compelling in view of the long continued course of administrative action treating the subject township as having been restored to entry for purposes of prospecting, locating and developing mineral resources, subject to compliance with the rules and regulations pertaining to forest reserves.

Dolores Olsen and Wesley E. Mace, et al., 45 IBLA 232 (Feb. 4, 1980)

In determining whether a national defense withdrawal, within the meaning of § 11(a)(1) of ANCSA, existed on Dec. 18, 1971, only the formal legal status of the withdrawal may be considered, and it is immaterial whether the purpose of the withdrawal has been fulfilled or whether the actual use to which the land is put has changed.

The Army's filing of a notice of intent to relinquish certain property cannot revoke a national defense withdrawal because the Army lacks the authority to revoke such withdrawals.

A notice of intent to relinquish property is not a relinquishment but a method by which an agency of the Federal Government expresses the intention to relinquish the property at a future time, upon completion of required statutory and regulatory procedures.

The issue of whether ANCSA supersedes certain provisions of the Federal Property and Administrative Services Act, as regards administrative actions taken concerning a specific withdrawal, is rendered moot by a finding that the withdrawn lands were never available for selection under ANCSA. When a notice of intention to relinquish affects lands not withdrawn pursuant to ANCSA, EIM is required to follow the provisions of the Federal Property and Administrative Services Act, and the regulations promulgated under that Act.

Appeal of Tanacross, Inc., 4 ANCAE 173 (Apr. 7, 1980) 87 I.L. 123

Appeal of Northway Natives, Inc., 4 ANCAE 207 (Apr. 21, 1980)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Water and Power Resources Service has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Florence Adkisson, 47 IBLA 121 (Apr. 28, 1980)

An oil and gas lease offer filed for land which has been previously withdrawn from mineral leasing may be properly rejected since it will not be validated by any future modification or revocation of the order of withdrawal. It is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

Edward C. Shepherdson, 47 IBLA 223 (May 13, 1980)

WITHDRAWALS AND RESERVATIONS--ContinuedSPRINGS AND WATERHOLES

The repeal of sec. 704(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2792, of certain statutory authority to reserve land as a waterhole only prohibits future withdrawals or reservations of land under the repealed statutes and does not affect known waterholes withdrawn prior to the repeal. It was proper for the Bureau of Land Management to reject a water pipeline right-of-way application for land containing a waterhole which was withdrawn prior to the Federal Land Policy and Management Act of 1976, and where the water is needed for a public use.

Grant L. Hacking, 50 IBLA 154 (Sept. 30, 1980)

TEMPORARY WITHDRAWALS

Applications filed for temporary withdrawals of land for proposed development under the Carey Act, 43 U.S.C. § 641 (1976), must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources, 48 IBLA 250 (June 26, 1980)

Applications filed for segregation of land for proposed development under the Carey Act must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources (On Reconsideration), 49 IBLA 221 (Aug. 12, 1980)

WORDS AND PHRASES

"Copy of the official record of the notice or certificate of location." Under the revised definition of the term at 43 CFR 3833.0-5(i) (1979), a duplicate of a notice of location which has been filed with the local recorder is a "copy of the official record of the notice or certificate of location," even though it is not stamped by the local recorder and does not include a reference to the local record, and is therefore acceptable under 43 CFR 3833.1-2(b) if tendered within 90 days of the date of location.

James E. Strong, 45 IBLA 386 (Feb. 13, 1980)

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. Under 43 CFR 3833.1-2 there is no express requirement that a machine reproduction be provided. Accordingly, a handwritten duplicate of a notice of location is acceptable under the regulations.

W. C. Miles, 48 IBLA 214 (June 16, 1980)

"Date of location." The date of location of a mining claim is determined in accordance with the law of the State where the claim is situated. Under Washington law, it is the date specified on the notice of location filed with the local recorder's office.

P. & S. Mining Co., 45 IBLA 115 (Jan. 23, 1980)

WORDS AND PHRASES--Continued

"Date of location." The date of location of mining claims is determined in accordance with the law of the State where the claims are situated. Under California law, the time for recordation in the county is measured from the date of the posting of the location notice on the claims.

Lee Resources Management Corp., 50 IBLA 131 (Sept. 24, 1980)

"Fair market value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

E. F. Service, Inc., 48 IBLA 233 (June 17, 1980)

Northwestern Colorado Broadcasting Co., 49 IBLA 23 (July 15, 1980)

"Headquarters." A headquarters site application is properly rejected when the applicant has failed to sustain his burden of showing that the site has been used as a headquarters, i.e., as the usual place of business, principal office, or administrative center of his snowmobile camp. The term "headquarters" will not be construed so broadly as to include within its meaning use of a site for recreational purposes with occasional payment of use of the facilities occurring via rendering of services and helping transport building materials to the cabin sites, or by meager and incidental payments of cash.

United States v. Floyd R. Ehmman, 50 IBLA 69 (Sept. 17, 1980)

"Interest." Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of any successful client, strictly at the client's option, in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. The option is no more than a mere hope or expectancy that a client will elect to employ the service as sales agent, so that there is no interest in the lease if issued, which must be disclosed.

Ervin J. Powers, 45 IBLA 186 (Jan. 30, 1980)

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Geosearch, Inc., 48 IBLA 190 (June 9, 1980)

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest

WORDS AND PHRASES--Continued

in each lease offer within the meaning of 43 CFR 3102.7, requiring the disclosure of interested parties.

Wayne E. DeBord, 50 IBLA 216 (Sept. 30, 1980)
87 I.D. 465

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

"Preceding assessment year." The "preceding assessment year" is the assessment year most recently completed. Thus, the requirement that evidence of annual assessment work completed during the "preceding assessment year" be filed on or before Oct. 22, 1979, concerns the assessment year ending at noon on Sept. 1, 1979.

Alaskamin Co., 49 IBLA 43 (July 21, 1980)

"Proprietary information." Proprietary information means information which, if disclosed, would do substantial harm to the competitive position of the outside source from which it was obtained and would inhibit the Government's ability to obtain this type of information in the future resulting in a substantial detrimental effect on a Government program. Internally generated Governmental decisions and information are not proprietary.

Southern Union Exploration Co., 51 IBLA 89 (Nov. 5, 1980)

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

"Resident citizen." As used in sec. 2 of the Act of Mar. 3, 1891, 26 Stat. 1096, 43 U.S.C. § 325 (1976), the term "resident citizen" refers to someone who is actually living in the State at the time of entry, and does not refer to individuals who have established tax or voting residency within a state but who are not actually residing therein.

Sandy C. Baicy, 46 IBLA 140 (Mar. 19, 1980)

"Rule of approximation." The Department of the Interior will not reject an oil and gas lease offer for public domain lands solely for the reason of the offer being for less than 640 acres where the amount by which the offer is under 640 acres is less than the amount by which the offer would exceed 640 acres by including the smallest adjoining subdivision available for leasing, the offer thereby conforming to the rule of approximation.

James M. Chudnow, 47 IBLA 265 (May 13, 1980)

WORDS AND PHRASES--Continued

"Signed and fully executed." The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) includes the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Elizabeth McClellan, 45 IBLA 342 (Feb. 7, 1980)

